

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

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AUTHORITY: §§ 270.0-1 to 270.45a-1 issued under sec. 38, 54 Stat. 841; 15 U.S.C. 80a-37. Interpret or apply sec. 40, 54 Stat. 842; 15 U.S.C. 80c-39. Additional authority is cited in parentheses following the sections affected.

§ 270.0-1 Definition of terms used in this part.

(a) As used in the rules and regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless the context otherwise requires:

(1) The term "Commission" means the Securities and Exchange Commission.

(2) The term "act" means the Investment Company Act of 1940.

(3) The term "section" refers to a section of the act.

(4) The terms "rule" and "regulations" refer to the rules and regulations adopted by the Commission pursuant to the act.

(b) Unless otherwise specifically provided, the terms used in the rules and regulations in this part shall have the meaning defined in the act.

(c) A rule or regulation which defines a term without express reference to the act or to the rules and regulations, or to a portion thereof, defines such terms for all purposes as used both in the act and in the rules and regulations in this part, unless the context otherwise requires.

(d) Unless otherwise specified or the context otherwise requires, the term "prospectus" means a prospectus meeting the requirements of section 10 (a) of the Securities Act of 1933 as amended.

[Rule N-1, 5 F.R. 4316, Oct. 31, 1940, as amended at 19 F.R. 6730, Oct. 20, 1954]

§ 270.0-2 General requirements of papers and applications.

(a) *Filing of papers.* All papers required to be filed with the Commission shall, unless otherwise provided by the rules and regulations in this part, be de-

livered through the mails or otherwise to the Securities and Exchange Commission, Washington 25, D.C. Except as otherwise provided by the rules and regulations in this part, such papers shall be deemed to have been filed with the Securities and Exchange Commission on the date when they are actually received by it.

(b) *Formal specifications respecting applications.* Every application for an order under any provision of the act, for which a form with instructions is not specifically prescribed, and every amendment to such application shall be filed in triplicate. One copy shall be signed by the applicant but the other two copies may have facsimile or typed signatures. Such applications should be on paper approximately 8½ by 13 inches in size, except that tables, charts, and other documents may be larger if folded to approximately that size. The left margin should be at least 1½ inches wide, and if the application is bound, it should be bound on the left side. All typewritten or printed matter (including deficits in financial statements) should be set forth in black so as to permit photocopying.

(c) *Authorizations respecting applications.* (1) Every application for an order under any provision of the act, for which a form with instructions is not specifically prescribed and which is executed by a corporation, partnership, or other company and filed with the Commission, shall contain a concise statement of the applicable provisions of the articles of incorporation, bylaws, or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the application.

(2) If an amendment to any such application shall be filed, such amendment shall contain a similar statement or, in lieu thereof, shall state that the authorization described in the original application is applicable to the individual who signs such amendment and that such authorization still remains in effect.

(3) When any such application or amendment is signed by an agent or attorney, the power of attorney evidencing his authority to sign shall contain similar statements and shall be filed with the Commission.

(d) *Verification of applications and statements of fact.* Every application for an order under any provision of the act, for which a form with instructions is not specifically prescribed and every amendment to such application, and every statement of fact formally filed in support of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

State of _____

County of _____, ss:

The undersigned being duly sworn deposes and says that he has duly executed the attached _____ dated _____, 19___ for and on behalf of _____

(Name of Company)

that he is the _____ of such _____ (Title of Officer)

company; and that all action by stockholders, directors, and other bodies necessary to authorize deponent to execute and file such instrument has been taken. Deponent further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(Signature)

(Type or print name beneath)

Subscribed and sworn to before me a _____ this _____ day of _____, (Title of Officer)

19___

[OFFICIAL SEAL] _____

My commission expires _____

(e) *Statement of grounds for application.* Each application should contain a brief statement of the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the act and of the rules and regulations under which application is made.

(f) *The application as evidence.* Any application may state that the applicant offers the application in evidence pursuant to this paragraph at any hearing on such application. If such offer is made, the application shall be received in

evidence at the hearing as proof in support of the allegations therein without the necessity of the applicant appearing and introducing further evidence, unless:

(1) Counsel for the Commission objects; or

(2) Objection is made on behalf of any interested State commission, State agency, any representative of interested security holders; or any person having a bona fide interest in such proceeding appears and objects.

If counsel for the Commission intends to object to the admission in evidence of the application or in advance of the hearing date is apprised of the intention of any person having a bona fide interest in the proceeding to appear in opposition to the application, he shall promptly advise the applicant thereof. If such objection or opposition is first made at such time that seasonable notice thereof cannot be given to the applicant, and the applicant does not appear, the hearing shall be continued to permit the applicant to appear and support its application at the adjourned date thereof. Unless the Commission otherwise directs, the application shall be dismissed if the applicant fails to appear and support its application after it has been notified by counsel for the Commission of such objection or opposition. Nothing in this paragraph shall be construed as preventing the receipt in evidence of any document or other evidence duly tendered at any hearing for a purpose for which it would be appropriate and competent apart from the provisions of this paragraph.

An acceptable statement offering an application in evidence pursuant to this paragraph is as follows:

CONSENT TO USE OF THIS DOCUMENT IN EVIDENCE

Pursuant to § 270.0-2(f), the company hereby offers this application and all exhibits hereto and all amendments hereof hereafter made, in evidence at any hearing with respect to the action herein sought, and requests that the original, a duplicate original, or a photo copy of this application and any and all amendments hereof, whether executed hereafter or concurrently herewith, be offered in evidence on behalf of the company and be received in evidence as an exhibit of the company in any such proceeding before the Securities and Exchange Commission, or any officer thereof or any Trial Examiner designated thereby, and that the verification of this application and any amendment hereof be considered as if the person signing such

verification had personally appeared and testified orally under oath, duly administered, in any such proceeding to the statements contained in such verification.

[Rule N-2, 5 F.R. 4316, Oct. 31, 1940]

§ 270.0-3 Amendments to registration statements and reports.

Registration statements filed with the Commission pursuant to section 8 (54 Stat 803; 15 U.S.C. 80a-8) and reports filed with the Commission pursuant to section 30 (54 Stat. 836; 15 U.S.C. 80a-35) may be amended in the following manner:

(a) An original and three copies of each such amendment shall be filed with the Commission at its office in Washington, D.C. With regard to size, paper, ink, margins, binding and similar formal matters, each amendment shall conform to the requirements for the registration statement or report it amends.

(b) Each amendment to a particular statement or report shall have a facing sheet as follows:

SECURITIES AND EXCHANGE COMMISSION

Washington 25, D.C.

Amendment No. -----

to

Form -----

File No. -----

(Describe the nature of the statement or report)

Dated -----, 19----

Pursuant to Section ----- of the
Investment Company Act of 1940

Name of Registrant

Address of Principal Office of Registrant

The facing sheet shall contain in addition any other information required on the facing sheet of the form for the statement or report which is being amended. Amendments to a particular statement or report shall be numbered consecutively in the order in which filed with the Commission.

(c) Each amendment shall contain in the manner required in the original statement or report the text of every item to which it relates and shall set out a complete amended answer to each such item. However, amendments to financial statements may contain only the particular statements or schedules in fact amended.

(d) Each amendment shall have a signature sheet containing the form of signature required in the statement or report it amends.

[Rule N-3, 6 F.R. 3966, Aug. 8, 1941]

§ 270.0-4 Incorporation by reference.

(a) A registered investment company may incorporate by reference as an exhibit, in any registration statement, application or report filed with the Commission, any document or part thereof previously or concurrently filed with the Commission pursuant to any act administered by the Commission. The incorporation may be made whether the matter incorporated was filed by such registered company or any other person. If any modification has occurred in the text of any such document since the filing thereof, the company shall file with the reference a statement containing the text of any such modification and the date thereof. If the number of copies of any document previously or concurrently filed with the Commission is less than the number required to be filed with the registration statement, application or report which incorporates such document, the company shall file therewith as many additional copies of the document as may be necessary to meet the requirements of the registration statement, application or report.

(b) A registered investment company may incorporate by reference, in any registration statement, application or report filed with the Commission, any financial statement or part thereof previously or concurrently filed with the Commission pursuant to any act administered by the Commission, if it substantially conforms to the requirements of the form on which such registration statement, application or report is filed. The incorporation may be made whether the matter incorporated was filed by such registered company or any other person. If a certificate of an independent public accountant or accountants is required to accompany a financial statement in any registration statement, application or report, the incorporation by reference of a certificate previously or concurrently filed will not be deemed a compliance with such requirements unless the written consent of the accountant or accountants to such incorporation is filed with the registration statement, application or report.

(c) In each case of incorporation by reference, the matter incorporated shall be clearly identified in the reference. An express statement shall be made to the effect that the specified matter is incorporated in the registration statement, application or report at the particular place where the information is required.

(d) Notwithstanding any particular provision permitting incorporation by reference, no registration statement, application or report shall incorporate by reference any exhibit or financial statement which (1) has been withdrawn, or (2) was filed in connection with a registration under the Investment Company Act of 1940, or a registration on a national securities exchange which has ceased to be effective, or (3) is contained in a registration statement or report subject, at the time of the incorporation by reference, to pending proceedings under section 8(b) or 8(d) of the Securities Act of 1933 (C. 38, sec. 8, 48 Stat. 79; C. 686, sec. 301, 54 Stat. 857; 15 U.S.C. 77h), section 8(e) of the Investment Company Act of 1940 (sec. 8(e), 54 Stat. 805; 15 U.S.C. 80a-8), or to an order entered under any of those sections.

(e) Notwithstanding any particular provision permitting incorporation by reference, the Commission may refuse to permit such incorporation in any case in which in its judgment such incorporation would render the registration statement, application, or report incomplete, unclear, or confusing.

[Rule N-4, 9 F.R. 338, Jan. 8, 1944. Redesignation noted at 14 F.R. 2761, May 26, 1949]

§ 270.0-5 Procedure with respect to applications and other matters.

The procedure set forth in this section will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the *FEDERAL REGISTER* and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the de-

sirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as of course on a date to be specified in the notice, unless prior to such date the Commission orders a hearing on the matter.

(c) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of any interested person or (2) upon its own motion.

[Rule N-5, 12 F.R. 3441, May 28, 1947, as amended at 22 F.R. 8933, Nov. 7, 1957]

§ 270.0-6¹ Consent to service of process to be furnished by nonresident brokers or dealers and by nonresident general partners or managing agents of brokers or dealers.

(a) Each nonresident broker or dealer registered or applying for registration pursuant to section 15(b) of the Securities Exchange Act of 1934, each nonresident general partner of a broker or dealer partnership which is registered or applying for registration, and each nonresident managing agent of any other unincorporated broker or dealer which is registered or applying for registration, shall furnish to the Commission, in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which (1) designates the Securities and Exchange Commission as an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought in any appropriate court in any place subject to the jurisdiction of the United States, with respect to any cause of action (i) which accrues during the period beginning when such broker or dealer becomes registered pursuant to section 15 of the Securities Exchange Act of 1934 and the rules and regulations thereunder and ending either when such registration is cancelled or revoked, or when the Commission receives from such broker or dealer a notice to withdraw from such registration, whichever is earlier, (ii) which arises out of any activity, in any place subject to the jurisdiction of the United States, occurring in connection

with the conduct of business of a broker or dealer, and (iii) which is founded, directly or indirectly, upon the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any rule or regulation under any of said Acts; and (2) stipulates and agrees that any such civil suit or action may be commenced by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (c) of this section, and that the service as aforesaid of any such process, pleadings, or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

(b) The required consent and power of attorney shall be furnished to the Commission within the following period of time:

(1) Each nonresident broker or dealer registered at the time this section becomes effective, and each nonresident general partner or managing agent of an unincorporated broker or dealer registered at the time this section becomes effective, shall furnish such consent and power of attorney within 60 days after such date;

(2) Each broker or dealer applying for registration after the effective date of this section shall furnish, at the time of filing such application, all the consents and powers of attorney required to be furnished by such broker or dealer and by each general partner or managing agent thereof: *Provided, however*, That where an application for registration of a broker or dealer is pending at the time this section becomes effective such consents and powers of attorney shall be furnished within 30 days after this section becomes effective.

(3) Each broker or dealer registered or applying for registration who or which becomes a nonresident broker or dealer after the effective date of this section, and each general partner or managing agent, of an unincorporated broker or dealer registered or applying for registration, who becomes a nonresident after the effective date of this section, shall furnish such consent and power of attorney within 30 days thereafter.

(c) Service of any process, pleadings or other papers on the Commission under

¹ Appears as 270.06 at 18 F.R. 2581, May 2, 1953.

this section shall be made by delivering the requisite number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered mail to the appropriate defendants at their last address of record filed with the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its file.

(d) For purposes of this section the following definitions shall apply:

(1) The term "broker" shall have the meaning set out in section 3 (a) (4) of the Securities Exchange Act of 1934.

(2) The term "dealer" shall have the meaning set out in section 3 (a) (5) of the Securities Exchange Act of 1934.

(3) The term "managing agent" shall mean any person, including a trustee, who directs or manages or who participates in the directing or managing of the affairs of any unincorporated organization or association which is not a partnership.

(4) The term "nonresident broker or dealer" shall mean (i) in the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(5) A general partner or managing agent of a broker or dealer shall be deemed to be a nonresident if the resides in any place not subject to the jurisdiction of the United States.

[18 F.R. 2581, May 2, 1953, as amended at 23 F.R. 9691, Dec. 16, 1958]

§ 270.0-7 Consent to service of process to be furnished by nonresident investment advisers and by nonresident investment general partners or managing agents of investment advisers.

(a) Each nonresident investment adviser registered or applying for registra-

tion pursuant to section 203 of the Investment Advisers Act of 1940, each nonresident general partner of an investment adviser partnership which is registered or applying for registration, and each nonresident managing agent of any other unincorporated investment adviser which is registered or applying for registration, shall furnish to the Commission, in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which (1) designates the Securities and Exchange Commission as an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought in any appropriate court in any place subject to the jurisdiction of the United States, where the cause of action (i) accrues on or after the effective date of this section, (ii) arises out of any activity, in any place subject to the jurisdiction of the United States, occurring in connection with the conduct of business of an investment adviser, and (iii) is founded, directly or indirectly, upon the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any rule or regulation under any of said acts; and (2) stipulates and agrees that any such civil suit or action may be commenced by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (c) of this section, and that the service as aforesaid of any such process, pleadings, or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

(b) The required consent and power of attorney shall be furnished to the Commission within the following period of time:

(1) Each non-resident investment adviser registered at the time this section become effective, and each non-resident general partner or managing agent of an unincorporated investment adviser registered at the time this section becomes effective, shall furnish such consent and power of attorney within 60 days after such date;

(2) Each investment adviser applying for registration after the effective date of this section shall furnish, at the time of filing such application, all the consents and powers of attorney required to

be furnished by such investment adviser and by each general partner or managing agent thereof: *Provided, however,* That where an application for registration of an investment adviser is pending at the time this rule becomes effective such consents and powers of attorney shall be furnished within 30 days after this section becomes effective.

(3) Each investment adviser registered or applying for registration who or which becomes a non-resident investment adviser after the effective date of this section, and each general partner or managing agent, of an unincorporated investment adviser registered or applying for registration, who becomes a non-resident after the effective date of this section shall furnish such consent and power of attorney within 30 days thereafter.

(c) Service of any process, pleadings or other papers on the Commission under this section shall be made by delivering the requisite number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered mail to the appropriate defendants at their last address of record filed with the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its file.

(d) For purposes of this section the following definitions shall apply:

(1) The term "investment adviser" shall have the meaning set out in section 202 (a) (11) of the Investment Advisers Act of 1940.

(2) The term "managing agent" shall mean any person, including a trustee, who directs or manages or who participates in the directing or managing of the affairs of any unincorporated organization or association which is not a partnership.

(3) The term "non-resident investment adviser" shall mean (i) in the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; (iii) in the case of a

partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(4) A general partner or managing agent of an investment adviser shall be deemed to be a nonresident if he resides in any place not subject to the jurisdiction of the United States.

(Secs. 19, 23, 48 Stat. 85, as amended, 901, as amended, sec. 319, 53 Stat. 1173, sec. 211, 54 Stat. 855; 15 U. S. C. 77s, 77sss, 78w, 80b-11) [19 F. R. 4300, July 14, 1954; 20 F. R. 2510, Apr. 16, 1955]

§ 270.2a-1 Valuation of portfolio securities in special cases.

(a) Any investment company whose securities are qualified for sale, or for whose securities application for such qualification has been made, in any state in which the securities owned by such company are required by applicable state law or regulations to be valued at cost or on some other basis different from that prescribed by clause (A) of section 2(a) (39) of the act for the purpose of determining the percentage of its assets invested in any particular type or classification of securities or in the securities of any one issuer, may, in valuing its securities for the purposes of sections 5 and 12 of the act, use the same basis of valuation as that used in complying with such state law or regulations in lieu of the method of valuation prescribed by clause (A) of section 2(a) (39) of the act.

(b) Any open-end company which has heretofore valued its securities at cost for the purpose of qualifying as a "mutual investment company" under the Internal Revenue Code, prior to its amendment by the Revenue Act of 1942, shall henceforth, for the purposes of sections 5 and 12 of the act, value its securities in accordance with the method prescribed in clause (A) of section 2(a) (39) of the act unless such company is permitted under paragraph (a) of this section to use a different method of valuation.

(c) A registered investment company which has adopted for the purposes of sections 5 and 12 of the act a method of valuation permitted by paragraph (a) of this section, shall state in its registration statement filed pursuant to section 8 (54 Stat. 803; 15 U.S.C. 80a-8) of the act, or in a report filed pursuant to sec-

tion 30 (54 Stat. 836; 15 U.S.C. 80a-30) of the act, the method of valuation adopted and the facts which justify the adoption of such method. A registered investment company which has adopted for the purposes of sections 5 and 12 of the act a method of valuation permitted by paragraph (a) of this section, unless it shall have adopted such method for the purpose or partly for the purpose of qualifying as a "mutual investment company" under the Internal Revenue Code, shall continue to use that method until it has notified the Commission of its desire to use a different method, and has received from the Commission permission for such change. Such permission may be made effective on a fixed date or within such reasonable time thereafter as may be deemed advisable under the circumstances.

(d) If at any time it appears that the method of valuation adopted by any company pursuant to paragraph (a) of this section is no longer justified by the facts, the Commission may require a change in the method of valuation within a reasonable period of time either to the method prescribed in clause (A) of section 2(a)(39) of the act or to some other method permitted by paragraph (a) of this section which is justified by the existing facts.

[Rule N-2A-1, 8 F.R. 3567, Mar. 24, 1943]

§ 270.2a-2 Effect of eliminations upon valuation of portfolio securities.

During any fiscal quarter in which eliminations of securities from the portfolio of an investment company occur, the securities remaining in the portfolio shall, for the purposes of sections 5 and 12 of the act (54 Stat. 800, 808; 15 U.S.C. 80a-5, 80a-12), be so valued as to give effect to the eliminations in accordance with one of the following methods: (a) specific certificate, (b) first in—first out, (c) last in—first out, or (d) average value. For these purposes, a single method of elimination shall be used consistently with respect to all portfolio securities. In giving effect to eliminations pursuant to this section values shall be computed in accordance with section 2(a)(39)(A) of the act (54 Stat. 790; 15 U.S.C. 80a-2).

[Rule N-2A-2, 6 F.R. 3966, Aug. 8, 1941]

§ 270.2a-3 Definition of "investment adviser" of an investment company for purposes of section 12(d)(3).

The term "investment adviser" of an investment company, for purposes of paragraph (3) of section 12(d) of the act, shall not be deemed to include a bank, as defined in section 2(a)(5) (sec. 2(a), 54 Stat. 791; 15 U.S.C. 80a-2) of the act: *Provided*, That nothing herein contained shall permit any registered investment company or any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any bank which is an investment adviser or such registered investment company or controlled company.

[Rule N-2A-3, 9 F.R. 339, Jan. 8, 1944]

§ 270.3c-1 Definition of certain terms used in section 3(c)(1) of the Act.

The term "public offering" as used in section 3(c)(1) of the Act shall not be deemed to include the offer or sale by a small business investment company, licensed under the Small Business Investment Act of 1958, of its capital stock to a small business concern pursuant to the provisions of section 304(c) of such Act, provided that—

(a) The offer or sale is made only in connection with the providing of capital to the small business concern by the small business investment company;

(b) The amount of capital stock so offered or sold does not exceed the amount which the small business concern has the right to acquire, with respect to the particular transaction, under the provisions of section 304(c) of such Act and the rules and regulations thereunder; and

(c) The capital stock acquired by the small business concern in connection with the offer and sale is purchased for investment and not with a view to the distribution thereof.

[25 F.R. 8026, Aug. 19, 1960]

§ 270.3c-2 Definition of beneficial ownership.

For the purpose of section 3(c)(1) of the Act, beneficial ownership by a company, other than a registered investment

company, owning 10 per centum or more of the outstanding voting securities of any issuer which is a small business investment company licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been re-ownership by one person (a) if and so voked, shall be deemed to be beneficial long as the value of all securities of small business investment companies owned by such company does not exceed 5 per centum of the value of its total assets; or (b) if and so long as such stock of the small business investment company shall be owned by a state development corporation which has been created by or pursuant to an act of the state legislature to promote and assist the growth and development of the economy within such state on a state-wide basis provided that, such state development corporation is not, or as a result of its investment in the small business investment company (considering such investment as an investment security) would not be, an investment company as defined in section 3 of the Act.

(Sec. 38, 54 Stat. 841; 15 U.S.C. 80a-37) [24 F.R. 7313, Sept. 11, 1959]

§ 270.3c-3 Exemption for certain group annuity contracts which provide for administration of funds held by an insurance company in a segregated account.

(a) Any transaction by an insurance company, as defined in section 2(a)(17) of the Act, involving a group annuity contract or contracts with an employer, employers or persons acting on their behalf (herein called the "employer") providing for the allocation of part or all of the employer's contributions thereunder to one or more separate accounts shall be exempt from the provisions of the Act, and no company, as defined in section 2(a)(8) of the Act, shall be deemed to have become subject to the Act by virtue of having engaged or participated in any of such transactions: *Provided*, That the contract

(1) Contains an undertaking by the insurance company to provide, to the extent of the employer's interest in such separate account, for the future issue of guaranteed annuities payable to covered employees on their retirement in fixed dollar amounts,

(2) Is made in connection with a plan which meets the requirements for qualification under section 401 of the Internal Revenue Code, or the requirements for deduction of the employer's contributions under Section 404(a)(2) of said Code whether or not the employer deducts the amounts paid for the contract under said section, and which plan does not provide for retirement benefits payable to covered employees which are measured by the investment results of assets allocated to a separate account, as defined herein, maintained by such insurance company.

(3) Prohibits the allocation to the separate account of any payment or contribution made by any employee, and

(4) Covers at least 25 employees at the time of its execution.

(b) "Separate account" as used in this section shall mean an account established and maintained pursuant to the law of any state or territory of the United States or the District of Columbia, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains or losses of the insurance company and which does not include the reserves maintained for guaranteed annuities in the course of payment.

(c) All references herein to sections of the Internal Revenue Code mean said sections as now or hereafter amended, or any corresponding provisions of prior or subsequent United States Revenue laws.

(d) The exemption provided in this section shall apply notwithstanding that there is no guarantee by the insurance company of or with respect to the investment results of assets allocated to a separate account.

(Secs. 6(c), 39, 54 Stat. 800; 15 U.S.C. 80a-6, 80a-38) [28 F.R. 402, Jan. 16, 1963]

§ 270.5b-1 Definition of "total assets."

The term "total assets," when used in computing values for the purposes of sections 5 and 12 of the act, shall mean the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation. This section shall not apply to any company which has adopt-

ed either of the alternative methods of valuation permitted by § 270.2a-1, [Rule N-5B-1, 6 F.R. 5920, Nov. 22, 1941]

§ 270.5b-2 Exclusion of certain guarantees as securities of the guarantor.

(a) For the purposes of section 5 of the act, a guarantee of a security shall not be deemed to be a security issued by the guarantor: *Provided*, That the value of all securities issued or guaranteed by the guarantor, and owned by the management company, does not exceed 10 percent of the value of the total assets of such management company.

(b) Notwithstanding paragraph (a) of this section, for the purposes of section 5 of the act, a guarantee by a railroad company of a security issued by a terminal company, warehouse company, switching company, or bridge company, shall not be deemed to be a security issued by such railroad company, *Provided*:

(1) The security is guaranteed jointly or severally by more than one railroad company; and

(2) No one of such guaranteeing railroad companies directly or indirectly controls all of its co-guarantors.

(c) For the purposes of section 5 of the act, a lease or other arrangement whereby a railroad company is or becomes obligated to pay a stipulated annual sum of rental either to another railroad company or to the security holders of such other railroad company shall not be deemed in itself a guarantee.

[Rule N-5B-2, 10 F.R. 581, Jan. 16, 1945]

§ 270.6b-1 Exemption of employees' securities company pending determination of application.

Any employees' securities company which files an application for an order of exemption under section 6(b) of the act (54 Stat. 801; 15 U.S.C. 80a-6) shall be exempt, pending final determination of such application by the Commission, from all provisions of the act applicable to investment companies as such.

[Rule N-6B-1, 6 F.R. 6126, Dec. 2, 1941]

§ 270.6d-1 Exemption for certain closed-end investment companies.

(a) An application under section 6(d) of the act shall contain the following information:

(1) A brief description of the character of the business and investment policy of the applicant.

(2) The information relied upon by the applicant to satisfy the conditions of paragraphs (1) and (2) of section 6(d) of the act.

(3) The number of holders of each class of the applicant's outstanding securities.

(4) An unconsolidated balance sheet as of a date not earlier than the end of the applicant's first fiscal year, together with a schedule specifying the title, the amount, the book value and, if determinable, the market value of each security in the applicant's portfolio.

(5) An unconsolidated profit and loss statement for the applicant's last fiscal year.

(6) A statement of each provision of the act from which the applicant seeks exemption, together with a statement of the facts by reason of which, in the applicant's opinion, such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(b) There shall be attached to each copy of the application a copy of Form N-8A. The form need not be executed, but it shall be clearly marked on its facing page as an exhibit to the application. The filing of Form N-8A in this manner shall not be construed as the filing of a notification of registration under section 8(a) of the act.

(c) The application may contain any additional information which the applicant desires to submit.

[Rule N-6D-1, 5 F.R. 4346, Nov. 2, 1940]

§ 270.7d-1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

(a) A management investment company organized under the laws of Canada or any province thereof may obtain an order pursuant to section 7(d) permitting its registration under the act and the public offering of its securities, if otherwise appropriate, upon the filing of an application complying with paragraph (b) of this section. All such applications will be considered by the Commission pursuant to the procedure set forth in § 270.0-5 and other applicable rules. Conditions and arrangements proposed by investment companies organized under the laws of other countries will be considered by the Commission in the light of the special circumstances and local laws involved in each case.

(b) An application filed pursuant to this section shall contain, inter alia, the following undertakings and agreements of the applicant:

(1) Applicant will cause each present and future officer, director, investment adviser, principal underwriter and custodian of the applicant to enter into an agreement, to be filed by applicant with the Commission upon the filing of its registration statement or upon the assumption of such office by such person which will provide, among other things, that each such person agrees (i) to comply with the applicant's Letters Patent (Charter) and By Laws, the act and the rules thereunder, and the undertakings and agreements contained in said application insofar as applicable to such person; (ii) to do nothing inconsistent with the applicant's undertakings and agreements required by this section; (iii) that the undertakings enumerated as subdivisions (i) and (ii) of this subparagraph constitute representations and inducements to the Commission to issue its order in the premises and continue the same in effect, as the case may be; (iv) that each such agreement constitutes a contract between such person and the applicant and its shareholders with the intent that applicant's shareholders shall be beneficiaries of and shall have the status of parties to such agreement so as to enable them to maintain actions at law or in equity within the United States and Canada for any violation thereof. In addition the agreement of each officer and director will contain provisions similar to those contained in subparagraph (6) of this paragraph.

(2) That every agreement and undertaking of the applicant, its officers, directors, investment adviser, principal underwriter and custodian required by this section (i) constitute inducements to the Commission for the issuance and continuance in effect of, and conditions to, the Commission's order to be entered under this section; (ii) constitute a contract among applicant and applicant's shareholders with the same intent as set forth in subparagraph (1) (iv) of this paragraph; and (iii) failure by the applicant or any of the above enumerated persons to comply with any such agreement and undertaking, unless permitted by the Commission, shall constitute a violation of the order entered under this section.

(3) That the Commission, in its discretion, may revoke its order permitting registration of the applicant and the public offering of its securities if it shall find after notice and opportunity for hearing that there shall have been a violation of such order or the act and may determine whether distribution of applicant's assets is necessary or appropriate in the interests of investors and may so direct

(4) That applicant will perform every action and thing necessary to cause and assist the custodian of its assets to distribute the same, or the proceeds thereof, if the Commission or a court of competent jurisdiction, shall have so directed by a final order.

(5) That any shareholder of the applicant or the Commission on its own motion or on request of shareholders shall have the right to initiate a proceeding (i) before the Commission for the revocation of the order permitting registration of the applicant or (ii) before a court of competent jurisdiction for the liquidation of applicant and a distribution of its assets to its shareholders and creditors. Such court may enter such order in the event that it shall find, after notice and opportunity for hearing, that applicant, its officers, directors, investment adviser, principal underwriter or custodian shall have violated any provision of the act or the Commission's order of registration of the applicant.

A court of competent jurisdiction for the purpose of subparagraphs (4) and (5) of this paragraph means the District Court of the United States of the district in which the assets of the applicant are maintained.

(6) That any shareholder of the applicant shall have the right to bring suit at law or in equity, in any court of the United States or Canada having jurisdiction over applicant, its assets or any of its officers or directors to enforce compliance by applicant, its officers and directors with any provision of applicant's Charter or By Laws, the act and the rules thereunder, or undertakings and agreements required by this section, insofar as applicable to such persons. That such court may appoint a trustee or receiver of the applicant with all powers necessary to implement the purposes of such suit, including the administration of the estate, the collection of corporate property including choses-

in-action, and distribution of applicant's assets to its creditors and shareholders. That applicant and its officers and directors waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of the applicant to bring such suit, reserving, however, their right to maintain that they have complied with the aforesaid provisions, undertakings and agreements, and otherwise to dispute such suit on its merits. Applicant, its officers and directors also agree that any final judgment or decree of any United States court as aforesaid, may be granted full faith and credit by a court of competent jurisdiction of Canada and consent that such Canadian court may enter judgment or decree thereon at the instance of any shareholder, receiver or trustee of the applicant.

(7) Applicant will file, and will cause each of its present or future directors, officers, or investment advisers who is not a resident of the United States to file with the Commission irrevocable designation of the applicant's custodian as an agent in the United States to accept service of process in any suit, action or proceeding before the Commission or any appropriate court to enforce the provisions of the acts administered by the Commission, or to enforce any right or liability based upon applicant's Charter, By Laws, contracts, or the respective undertakings and agreements of any such person required by this section, or which alleges a liability on the part of any such persons arising out of their service, acts or transactions relating to the applicant.

(8) Applicant's Charter and By Laws, taken together, will contain, so long as applicant is registered under the act, in substance the following:

(i) The provisions of the act as follows: section 2 (a) *Provided*, That the term "Government securities" defined in section 2 (a) (16) may include securities issued or guaranteed by Canada or any instrumentality of the government of Canada; the term "value" defined in section 2 (a) (39) may be defined solely for the purposes of sections 5 and 12 in accordance with the provisions of § 270.2a-1 (Rule N-2A-1) if the same shall be necessary or desirable to comply with Canadian regulatory or revenue laws or rules or regulations thereunder; the term "bank" defined in section 2 (a)

(5) shall be defined solely for the purposes of sections 9 and 10, as any banking institution; section 4; section 5; section 6 (c); section 9; section 10 (a), (b), (c), (e), (f), and (g): *Provided*, That the provisions of section 10 (d) may be substituted for the provisions of sections 10 (a) and 10 (b) (2) if applicable; section 11; section 12 (a), (b), (c), and (d); section 13 (a); section 15 (a), (b), and (c); section 16 (a); sections 17, 18, 19, 20 and 21; section 22 (d); section 22 (e): *Provided*, That the Toronto Stock Exchange or the Montreal Stock Exchange or both may be included in addition to the New York Stock Exchange; section 22 (f); section 22 (g); section 23; section 25 (a) and (b); section 30 (a), (b), (d), (e), and (f); section 31; section 32 (a): *Provided*, That provision may be made for the selection and termination of employment of the accountant in compliance with The Companies Act of Canada; section 32 (b). Where a provision of the act prohibits or directs action by an investment company, or its directors, officers or employees, the Charter or By Laws shall state that the applicant or its directors, officers or employees shall or shall not act, as the case may be, in conformity with the intent of the statute; where the provision applies to others, such as principal underwriters, investment advisers, controlled companies and affiliated persons, the Charter or By Laws shall also state that the applicant will not permit the prohibited conduct or will obtain the required action. Any of the provisions of sections 11, 12, 15, 18, 22, 23, 30, and 31 may be omitted if not applicable to a company of applicant's classification or sub-classification as defined in section 4 or 5 of the act or if not applicable because the subject matter of such provisions is prohibited by the Charter or By Laws. Other provisions of the act not specified above may be incorporated in the applicant's Charter or By Laws at its option.

(ii) Any question of interpretation of any term or provision of the Charter or By Laws having a counterpart in or otherwise derived from a term or provision of the act shall be resolved by reference to interpretations, if any, of the corresponding term or provision of the act by the courts of the United States of America or, in the absence of any controlling decision of any such court, by rules, regulations, orders or interpretations of the Commission.

(iii) Applicant will maintain the original or duplicate copies of its books and records at the office of its custodian or other office located within the United States.

(iv) At least a majority of the directors and of the officers of the applicant will be United States citizens of whom a majority will be resident in the United States.

(v) Applicant will appoint, by contract, a bank, as defined in section 2 (a) (5) and having the qualification described in section 26 (a) (1), to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash necessary to meet applicant's current administrative expenses. Said contract will provide, inter alia, that said custodian will (a) consummate all purchases and sales of securities by applicant, other than purchases and sales on an established securities exchange, through the delivery of securities and receipt of cash, or vice versa as the case may be, within the United States, and (b) redeem in the United States such of applicant's shares as shall be surrendered therefor, and (c) distribute applicant's assets, or the proceeds thereof, to applicant's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in subparagraphs (3) and (5) of this paragraph.

(vi) Applicant's principal underwriter for the sale of its shares will be a citizen and resident of the United States or a corporation organized under the laws of a state of the United States, and having its principal place of business therein, and if redeemable shares are offered, also a member in good standing of a securities association registered under section 15A of the Securities Exchange Act of 1934.

(vii) Applicant will appoint an accountant, qualified to act as an independent public accountant for the applicant under the act and the rules thereunder, who maintains a permanent office and place of business in the United States.

(viii) Any contract entered into between the applicant and its investment adviser and principal underwriter will contain provisions in compliance with the requirements of sections 15, 17 (i)

and 31 and the rules thereunder, and require that the investment adviser maintain in the United States its books and records or duplicate copies thereof relating to applicant.

(ix) Applicant's Charter and By Laws will not be changed in any manner inconsistent with this paragraph or the act and the rules thereunder unless authorized by the Commission.

(9) Contracts of the applicant, other than those executed on an established securities exchange which do not involve affiliated persons, will provide that:

(i) Such contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the act, the Securities Act of 1933, and the Securities Exchange Act of 1934, if the subject matter of such contracts is within the purview of such acts; and

(ii) In effecting the purchase or sale of assets the parties thereto will utilize the United States mails or means of interstate commerce.

(10) Applicant will furnish to the Commission with its registration statement filed under the act a list of persons affiliated with it and with its investment adviser and principal underwriter and will furnish revisions of such list, if any, concurrently with the filing of periodic reports required to be filed under the act. (Sec. 7, 54 Stat. 802; 15 U. S. C. 80a-7) [19 F. R. 2585, May 5, 1954]

§ 270.8b-1 Scope of §§ 270.8b-1 to 270.8c-1.

The rules contained in §§ 270.8b-1 to 270.8c-1 shall govern all registration statements pursuant to section 8 of the act, including notifications of registration pursuant to section 8(a), and all reports pursuant to section 30 (a) or (b) of the act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

[18 F.R. 8575, Dec. 19, 1953]

§ 270.8b-2 Definitions.

Unless the context otherwise requires, the following terms, when used in the rules contained in §§ 270.8b-1 to 270.8c-1, in the rules under section 30 (a) or (b) of the act or in the forms for registration statements and reports pursuant to sec-

tion 8 or 30 (a) or (b) of the act, shall have the respective meanings indicated in this section:

Amount. The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

Certified. The term "certified", when used in regard to financial statements, means certified by an independent public or independent certified public accountant or accountants.

Charter. The term "charter" includes articles of incorporation, declaration of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

Employee. The term "employee" does not include a director, trustee, officer or member of the advisory board.

Fiscal year. The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

Investment income. The term "investment income" means the aggregate of net operating income or loss from real estate and gross income from interest, dividends and all other sources, exclusive of profit or loss on sales of securities or other properties.

Material. The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before buying or selling any security of the particular company.

Parent. A "parent" of a specified person is an affiliated person who controls the specified person directly or indirectly through one or more intermediaries.

Previously filed or reported. The terms "previously filed" and "previously reported" mean previously filed with, or reported in, a registration statement filed under section 8 of the act or under the Securities Act of 1933, a report filed under section 30 of the act or section 13 or 15 (d) of the Securities Exchange Act of 1934, a definitive proxy statement filed under section 20 of the act or section 14 of the Securities Exchange Act of 1934,

or a prospectus filed under the Securities Act of 1933; provided, that information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

Share. The term "share" means a share of stock in a corporation or unit of interest in an unincorporated person.

Significant subsidiary. The term "significant subsidiary" means a subsidiary meeting any one of the following conditions:

(1) The value of the investments in and advances to the subsidiary by its parent and the parent's other subsidiaries, if any exceed 10 percent of the value of the assets of the parent or, if a consolidated balance sheet is filed, the value of the assets of the parent and its consolidated subsidiaries.

(2) The total investment income of the subsidiary or, in the case of a non-investment company subsidiary, the net income exceeds 10 percent of the total investment income of the parent or, if consolidated statements are filed, 10 percent of the total investment income of the parent and its consolidated subsidiaries.

(3) The subsidiary is the parent of one or more subsidiaries and, together with such subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

Subsidiary. A "subsidiary" of a specified person is an affiliated person who is controlled by the specified person, directly or indirectly, through one or more intermediaries.

Totally-held subsidiary. The term "totally-held subsidiary" means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally-held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally-held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not over-due and which matures within one year from the date of its creation, whether evidenced by securities or not.

[18 F.R. 8575, Dec. 19, 1953, as amended at 19 F.R. 2779, May 14, 1954]

§ 270.8b-3 Title of securities.

Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1950 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

[18 F. R. 8575, Dec. 19, 1953]

§ 270.8b-4 Interpretation of requirements.

Unless the context clearly shows otherwise:

(a) The forms require information only as to the company filing the registration statement or report.

(b) Whenever any fixed period of time in the past is indicated, such period shall be computed from the date of filing.

(c) Whenever words relate to the future, they have reference solely to present intention.

(d) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

[18 F. R. 8575, Dec. 18, 1953]

§ 270.8b-5 Time of filing original registration statement.

An investment company shall file a registration statement with the Commission on the appropriate form within three months after the filing of notification of registration under section 8(a) of the act, provided that if the fiscal year of the company ends within the three months period, its registration statement

may be filed within three months after the end of such fiscal year.

[19 F.R. 2779, May 14, 1954]

§ 270.8b-10 Requirements as to proper form.

Every registration statement or report shall be prepared in accordance with the form prescribed therefor by the Commission, as in effect on the date of filing. Any such statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Commission within thirty days after the date of filing.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-11 Number of copies; signatures; binding.

(a) Three complete copies of each registration statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission.

(b) At least one copy of the registration statement or report shall be manually signed in the manner prescribed by the appropriate form. If the registration statement or report is typewritten, one of the signed copies filed with the Commission shall be the original "ribbon" copy. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the registration statement or report.

(c) Each copy of a registration statement or report filed with the Commission shall be bound in one or more parts, without stiff covers. The bindings shall be made on the left-hand side and in such manner as to leave the reading matter legible.

[18 F. R. 8576, Dec. 19, 1953]

§ 270.8b-12 Requirements as to paper, printing and language.

(a) Registration statements and reports shall be filed on good quality unglazed, white paper, 8½ x 13 inches in size, insofar as practicable. However, tables, charts, maps, and financial statements may be on larger paper if folded to that size.

(b) The registration statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed,

mimeographed, or typewritten. However, the registration statement or report or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photo-copying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(c) The body of all printed registration statements and reports shall be in roman type at least as large as ten-point modern type. However, to the extent necessary for convenient presentation, financial statements and other statistical or tabular data and the notes thereto may be in roman type at least as large as eight-point modern type. All type shall be leaded at least two points.

(d) Registration statements and reports shall be in the English language. If any exhibit or other paper or document filed with a registration statement or report is in a foreign language, it shall be accompanied by a translation into the English language.

[18 F. R. 8576, Dec. 19, 1953]

§ 270.8b-13 Preparation of registration statement or report.

The registration statement or report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. However, where any item requires information to be given in tabular form, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted from the registration statement or report. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-14 Riders; inserts.

Riders shall not be used. If the registration statement or report is typed

on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-15 Amendments.

All amendments shall be filed under cover of the facing sheet of the appropriate form, shall be clearly identified as amendments, and shall comply with all pertinent requirements applicable to registration statements and reports. Amendments shall be filed separately for each separate registration or report amended.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-20 Additional information.

In addition to the information expressly required to be included in a registration statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

[18 F.R. 8576, Dec. 19, 1953]

§ 280.8b-21 Information unknown or not available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted subject to the following conditions:

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

[18 F. R. 8576, Dec. 19, 1953]

§ 270.8b-22 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-23 Incorporation by reference.

(a) Any registrant may incorporate by reference, in answer or partial answer to any item of a registration statement or report, any information contained elsewhere in the statement or report or any information contained in any other statement, report or prospectus filed with the Commission pursuant to any Act administered by it, provided that a copy of such other statement, report or prospectus is filed with each copy of the registration statement or report in which it is incorporated by reference. Matter contained in an exhibit, however, may be incorporated only to the extent permitted by § 270.8b-24 (Rule N-8B-24).

(b) Any financial statement filed with the Commission pursuant to any act administered by the Commission may be incorporated by reference in a registration statement or report, filed with the Commission by the same or any other person, if it substantially conforms to the requirements of the form on which the statement or report is filed.

(c) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the registration statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

[18 F.R. 8576, Dec. 19, 1953, as amended at 19 F.R. 2779, May 14, 1954]

§ 270.8b-24 Summaries or outlines of documents.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such

statement, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference. Matter contained in an exhibit may be incorporated by reference in answer to an item only to the extent permitted by this section.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-25 Extension of time for furnishing information.

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commission as a separate document an application (a) identifying the information, document or report in question, (b) stating why the filing thereof at the time required is impracticable, and (c) requesting an extension of time for filing the information, document or report to a specified date not more than 60 days after the date it would otherwise have to be filed. The application shall be deemed granted unless the Commission, within 10 days after receipt thereof, shall enter an order denying the application. Section 270.0-5 (Rule N-5) shall not apply to such applications.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-30 Additional exhibits.

A company may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

[18 F.R. 8576, Dec. 19, 1958]

§ 270.8b-31 Omission of substantially identical documents.

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, copies of only one of such documents need be filed, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the documents filed. The Commission may at any time in its discretion require the filing of copies of any documents so omitted.

[18 F.R. 8576, Dec. 19, 1953]

§ 270.8b-32 Incorporation of exhibits by reference.

(a) Any document or part thereof filed with the Commission pursuant to any act administered by the Commission may be incorporated by reference as an exhibit to any registration statement or report filed with the Commission by the same or any other person.

(b) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, a statement containing the text of such modification and the date thereof shall be filed with the reference.

[18 F. R. 8576, Dec. 19, 1953]

§ 270.10f-1 Conditional exemption of certain underwriting transactions.

Any purchase or other acquisition by a registered management company acting, pursuant to a written agreement, as an underwriter of securities of an issuer which is not an investment company shall be exempt from the provisions of section 10(f) (54 Stat. 806; 15 U.S.C. 80a-10) upon the following conditions;

(a) The party to such agreement other than such registered company is a principal underwriter of such securities, which principal underwriter (1) is a person primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or related activities, whose gross income normally is derived principally from such business or related activities, and (2) does not control or is not under common control with such registered company.

(b) No public offering of the securities underwritten by such agreement has been made prior to the execution thereof.

(c) Such securities have been effectively registered pursuant to the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. 77a-aa) prior to the execution of such agreement.

(d) In regard to any securities underwritten, whether or not purchased, by the registered company pursuant to such agreement, such company shall be allowed a rate of gross commission, spread, concession or other profit not less than the amount allowed to such principal underwriter, exclusive of any amounts received by such principal underwriter as a management fee from other principal underwriters.

(e) Such agreement is authorized by resolution adopted by a vote of not less than a majority of the board of directors of such registered company, none of which majority is an affiliated person of such principal underwriter, of the issuer of the securities underwritten pursuant to such agreement or of any person engaged in a business described in paragraph (a)(1) of this section.

(f) The resolution required in paragraph (e) of this section shall state that it has been adopted pursuant to this section, and shall incorporate the terms of the proposed agreement by attaching a copy thereof as an exhibit or otherwise.

(g) A copy of the resolution required in paragraph (e) of this section, signed by each member of the board of directors of the registered company who voted in favor of its adoption, shall be transmitted to the Commission not later than the fifth day succeeding the date on which such agreement is executed.

[Rule N-10F-1, 6 F.R. 1191, Feb. 28, 1941]

§ 270.10f-2 Exercise of warrants or rights received on portfolio securities.

Any purchase or other acquisition of securities by a registered investment company pursuant to the exercise of warrants or rights to subscribe to or to purchase securities shall be exempt from the provisions of section 10(f) (sec. 10(f), 54 Stat. 807; 15 U.S.C. 80a-10) of the act, *Provided*, That the warrants or rights so exercised (a) were offered or issued to such company as a security holder on the same basis as all other holders of the class or classes of securities to whom such warrants or rights were offered or issued, and (b) do not exceed 5 percent of the total amount of such warrants or rights so issued.

[Rule N-10F-2, 9 F.R. 339, Jan. 8, 1944]

§ 270.10f-3 Exemption of acquisition of securities during the existence of underwriting syndicate.

Any purchase of securities by a registered investment company prohibited by section 10(f) of the act shall be exempt from the provisions of such section if the following conditions are met:

(a) The securities to be purchased are (1) part of an issue effectively registered under the Securities Act of 1933 which is being offered to the public; (2) purchased at not more than the public of-

fering price prior to the end of the first full business day after the first date on which the registered issue is offered to the public, if not offered for subscription upon exercise of rights or, if so offered, purchased on or before the fourth day preceding the day on which the rights' offering terminates; and (3) offered pursuant to an underwriting agreement under which the underwriters are committed to purchase all of the registered securities being offered, except those purchased by others pursuant to a rights' offering, if the underwriters purchase any thereof.

(b) The gross commission, spread or profit to the principal underwriters (excluding, in the case of a rights' offering, any profits or losses resulting from purchases or sales by the underwriters of rights or securities during or after the rights period) shall not exceed: (1) 7.0 percent of the public offering price if the security to be purchased is a common stock; (2) 3.50 percent of the public offering price if the security to be purchased is a preferred stock, whether or not convertible into common stock; (3) 2.50 percent of the public offering price if the security to be purchased is a subordinated debenture, or a bond or debenture convertible into common stock or having common stock purchase warrants attached; or (4) 1.50 percent of the public offering price in respect of any other security to be purchased.

(c) The issuer of the securities to be purchased shall have been in continuous operation for not less than three years, including the operations of any predecessors.

(d) The amount of securities of any class of such registered issue to be purchased by the registered investment company or by two or more investment companies having the same investment adviser, shall not exceed 3 percent of the amount of the offering of such class.

(e) The consideration to be paid by the registered investment company in purchasing the securities being offered shall not exceed 3 percent of the total assets of such registered investment company, provided that if such consideration shall exceed \$1,000,000, it shall not exceed 1 percent of such company's total assets.

(f) Such registered investment company does not purchase the securities

being offered directly or indirectly from an officer, director, member of an advisory board, investment adviser or employee of such registered investment company or from a person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person. A purchase from a syndicate manager shall not be deemed to be a purchase from a specific underwriter so long as that underwriter does not benefit directly or indirectly from the transaction.

(g) The purchase of the securities being offered shall have been authorized or approved by a resolution of the board of directors of the registered investment company, or of an executive, investment, or similar committee composed of at least three members of such board, or of a similar committee of the registered investment company's investment adviser provided that there is no affiliation direct or indirect between such investment adviser or any of its partners, employees, or stockholders and any principal underwriter of the issue being offered, which resolution shall state that in the judgment of the board or committee, the purchase of securities proposed will meet all the requirements of paragraphs (a) to (f) of this section, and which authorization or approval shall have been supported by the vote (at a meeting or by written consent given without a meeting) of not less than a majority (consisting of at least three persons) of the members of the board of directors or of the committee who were not affiliated persons of any principal underwriter of the issue offered.

(h) A statement of the transaction clearly indicating compliance with this section shall be filed with the Commission within thirty days after consummation thereof.

[23 F. R. 9549, Dec. 10, 1958]

§ 270.13a-1 Exemption for change of status by temporarily diversified company.

A change of its subclassification by a registered management company from that of a diversified company to that of a nondiversified company shall be exempt from the provisions of section 13(a)(1) of the act (54 Stat. 811; 15 U.S.C. 80a-13), if such change occurs under the following circumstances:

(a) Such company was a nondiversified company at the time of its registration pursuant to section 8(a) (54 Stat. 803; 15 U.S.C. 80a-8), or thereafter legally became a nondiversified company.

(b) After its registration and within 3 years prior to such change, such company became a diversified company.

(c) At the time such company became a diversified company, its registration statement filed pursuant to section 8(b) (54 Stat. 803; 15 U.S.C. 80a-8), as supplemented and modified by any amendments and reports theretofore filed, did not state that the registrant proposed to become a diversified company.

[Rule N-13A-1, 6 F.R. 3967, Aug. 8, 1941]

§ 270.14a-1 Use of notification pursuant to regulation E under the Securities Act of 1933.

For the purposes of section 14(a) (3) of the Act, registration of securities under the Securities Act of 1933 by a small business investment company operating under the Small Business Investment Act of 1958 shall be deemed to include the filing of a notification under Rule 604 of Regulation E promulgated under said Act if provision is made in connection with such notification which in the opinion of the Commission adequately insures (a) that after the effective date of such notification such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least \$100,000; (b) that said aggregate net amount will be paid into such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (c) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least \$100,000 within ninety days after such notification becomes effective.

[25 F.R. 3512, Apr. 22, 1960]

§ 270.15a-1 Exemption from stockholders' approval of certain small investment advisory contracts.

An investment adviser of a registered investment company shall be exempt from the requirement of sections 15(a) and 15(e) of the act (54 Stat. 812; 15 U.S.C. 80a-15) that the written contract pursuant to which he acts shall have been approved by the vote of a majority of the outstanding voting securities of such company, if the following conditions are met:

(a) Such investment adviser is not an affiliated person of such company (except as investment adviser) nor of any principal underwriter for such company.

(b) His compensation as investment adviser of such company in any fiscal year of the company during which any such contract is in effect either (1) is not more than \$100 or (2) is not more than \$2,500 and not more than 1/40 of 1 percent of the value of the company's net assets averaged over the year or taken as of a definite date or dates within the year.

(c) The aggregate compensation of all investment advisers of such company exempted pursuant to this section in any fiscal year of the company either (1) is not more than \$200 or (2) is not more than 1/20 of 1 percent of the value of the company's net assets averaged over the year or taken as of a definite date or dates within the year.

[Rule N-15A-1, 6 F.R. 2275, Jan. 8, 1944]

§ 270.17a-1 Exemption of certain underwriting transactions exempted by § 270.10f-1.

Any transaction exempted pursuant to § 270.10f-1 shall be exempt from the provisions of section 17(a) (1) of the act (54 Stat. 815; 15 U.S.C. 80a-17).

[Rule N-17A-1, 6 F.R. 1191, Feb. 28, 1941]

§ 270.17a-2 Exemption of certain purchase, sale or borrowing transactions.

Purchase, sale or borrowing transactions occurring in the usual course of business between affiliated persons of registered investment companies shall be exempt from section 17(a) of the act provided (a) the transactions involve notes, drafts, time payment contracts, bills of exchange, acceptance or other property of a commercial character rather than of an investment character; (b) the buyer or lender is a bank; and (c) the seller or

borrower is a bank or is engaged principally in the business of installment financing.

[Rule N-17A-2, 12 F.R. 5008, July 29, 1947]

§ 270.17a-3 Exemption of transactions with fully owned subsidiaries.

(a) The following transactions shall be exempt from section 17(a) of the act:

(1) Transactions solely between a registered investment company and one or more of its fully owned subsidiaries or solely between two or more fully owned subsidiaries of such company.

(2) Transactions solely between any subsidiary of a registered investment company and one or more fully owned subsidiaries of such subsidiary or solely between two or more fully owned subsidiaries of such subsidiary.

(b) The term "fully owned subsidiary" as used in this section, means a subsidiary (1) all of whose outstanding securities, other than directors' qualifying shares, are owned by its parent and/or the parent's other fully owned subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other fully owned subsidiaries in an amount which is material in relation to the particular subsidiary, excepting (i) indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and (ii) any other indebtedness to one or more banks or insurance companies.

[Rule N-17A-3, 12 F.R. 3442, May 28, 1947]

§ 270.17a-4 Exemption of transactions pursuant to certain contracts.

Transactions pursuant to a contract shall be exempt from section 17(a) of the act if at the time of the making of the contract and for a period of at least six months prior thereto no affiliation or other relationship existed which would operate to make such contract or the subsequent performance thereof subject to the provisions of said section 17(a).

[Rule N-17A-4, 12 F.R. 5008, July 29, 1947]

§ 270.17a-5 Pro rata distribution neither "sale" nor "purchase."

When a company makes a pro rata distribution in cash or in kind among its common stockholders without giving any election to any stockholder as to the specific assets which such stockholder shall receive, such distribution shall not be

deemed to involve a sale to or a purchase from such distributing company as those terms are used in section 17(a) of the act. [20 F.R. 7447, Oct. 6, 1955]

§ 270.17a-6 Exemption of certain transactions with affiliates from the provisions of paragraphs (1) and (3) of section 17(a) of the Investment Company Act of 1940.

(a) The sale of any security or other property to a registered investment company which is a small business investment company licensed under the Small Business Investment Act of 1958 by an affiliated small business concern, and the borrowing of money or other property from such an investment company by the small business concern, which is prohibited by paragraphs (1) and (3) of section 17(a) of the Act solely because of an affiliation created through the owning, holding, or controlling with power to vote, directly or indirectly, by the investment company, of voting securities of such concern, shall be exempt from the provisions of said paragraphs. The exemption provided by this rule shall not be available if any person having an affiliate, promoter or principal underwriter relationship with the investment company also has a direct or indirect financial interest in the small business concern. In determining compliance with the preceding sentence, a financial interest in the small business concern shall be disregarded if it represents solely an interest: (1) By a wholly owned subsidiary of the investment company; (2) in fees paid for services as a director of the small business concern; (3) based solely upon ownership of securities of the investment company; or (4) excepted from the requirements of paragraph (d)(3) of § 270.17d-1.

(b) The pertinent details of each transaction for which exemption is claimed pursuant to paragraph (a) of this section shall be reported in writing by the investment company to (1) its stockholders in its annual report to stockholders which report shall cover all such transactions during the preceding 12-month period, and (2) the Commission within 30 days after the end of each semiannual accounting period of the investment company which report shall cover all such transactions during the preceding six-month period.

[26 F.R. 11240, Nov. 29, 1961]

§ 270.17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

(a) No affiliated person of or principal underwriter for any registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B) of the act) and no affiliated person of such a person or principal underwriter, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant, and which is entered into, adopted or modified subsequent to the effective date of this rule, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to such adoption or modification if not so submitted, except that the provisions of this rule shall not preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(b) In passing upon such applications, the Commission will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

(c) "Joint enterprise or other joint arrangement or profit-sharing plan" as used in this section shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertak-

ing, but shall not include an investment advisory contract subject to section 15 of the act.

(d) Notwithstanding the requirements of paragraph (a) of this section, no application need be filed pursuant to this section with respect to any of the following:

(1) Any profit-sharing plan provided by any controlled company which is not an investment company for its officers or employees, provided no affiliated person of any investment company which is an affiliated person of such controlled company participates therein.

(2) Any plan provided by any registered investment company or any controlled company for its officers or employees if such plan has been qualified under section 401 of the Internal Revenue Code of 1954 and all contributions paid under said plan by the employer qualify as deductible under section 404 of said Code.

(3) Any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing ("Investments"), made by a bank and a small business investment company (SBIC) licensed under the Small Business Investment Act of 1958, whether such transactions are contemporaneous or separated in time, where the bank is an affiliated person of either (i) the SBIC or (ii) an affiliated person of the SBIC; but reports containing pertinent details as to Investments and transactions relating thereto shall be made at such time, on such forms and by such persons as the Commission may from time to time prescribe.

[22 F.R. 426, Jan. 23, 1957, as amended at 26 F.R. 11240, Nov. 29, 1961]

§ 270.17d-2 Form for report by small business investment company and affiliated bank.

Form N-17D-1 is hereby prescribed as the form for reports required by paragraph (d) (3) of § 270.17d-1.

[26 F.R. 11240, Nov. 29, 1961]

§ 270.17e-1 Remuneration permitted affiliated persons of registered investment companies acting as brokers in over-the-counter transactions.

The commission fee or other remuneration from any source of any person sub-

ject to section 17(e) of the Investment Company Act of 1940 (54 Stat. 816; 15 U.S.C. 80a-17) for acting as broker in connection with any sale referred to in paragraph (2) (c) thereof may exceed 1 percent of the sale price of the securities sold if such remuneration does not exceed:

(a) In the case of securities which are listed or admitted to unlisted trading privileges on one or more national securities exchanges, the lowest broker's commission which any exchange upon which the securities are traded fixes as a minimum for effecting such a transaction on such exchange, or

(b) In the case of securities which are not listed or admitted to unlisted trading privileges on any national securities exchange, the lowest broker's commission which is fixed as a minimum for effecting a transaction in listed securities of a similar type, of any equal number of units and at the same price on any national securities exchange located in the same city as the principal office of the broker, or if there is no such exchange located in that city, then on any national securities exchange located in the nearest city where a national securities exchange is located: *Provided*, That where a broker represents both purchaser and seller in the same transaction, the remuneration shall not be greater than the minimum commission prescribed by the appropriate exchange for either a purchase or a sale.

[Rule N-17E-1, 7 F.R. 5209, July 9, 1942]

§ 270.17f-1 Custody of securities with members of national securities exchanges.

(a) No registered management investment company shall place or maintain any of its securities or similar investments in the custody of a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 (whether or not such company trades in securities for its own account) except pursuant to a written contract which shall have been approved, or if executed before January 1, 1941, shall have been ratified not later than that date, by a majority of the board of directors of such investment company.

(b) The contract shall require, and the securities and investments shall be maintained in accordance with the following:

(1) The securities and similar investments held in such custody shall at all times be individually segregated from the securities and investments of any other person and marked in such manner as to clearly identify them as the property of such registered management company, both upon physical inspection thereof and upon examination of the books of the custodian. The physical segregation and marking of such securities and investments may be accomplished by putting them in separate containers bearing the name of such registered management investment company or by attaching tags or labels to such securities and investments.

(2) The custodian shall have no power or authority to assign, hypothecate, pledge or otherwise to dispose of any such securities and investments, except pursuant to the direction of such registered management company and only for the account of such registered investment company.

(3) Such securities and investments shall be subject to no lien or charge of any kind in favor of the custodian or any persons claiming through the custodian.

(4) Such securities and investment shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the registered management investment company, and shall be examined by such accountant at least one other time, chosen by him, during the fiscal year. Certificates of such independent public accountant stating that he has made an examination of such securities and investments, and describing the nature of the examination, shall be transmitted to the Commission promptly after each such examination.

(5) Such securities and investments shall, at all times, be subject to inspection by the Commission through its employees or agents.

(6) The provisions of subparagraph (1), (2) and (3) of this paragraph shall not apply to securities and similar investment company for or sold to such investment company by the company which is custodian until the securities have been reduced to the physical possession of the custodian and have been paid for by such investment company: *Provided*, That the company which is custodian shall take possession of such

securities at the earliest practicable time. Nothing in this subparagraph shall be construed to relieve any company which is a member of a national securities exchange of any obligation under existing law or under the rules of any national securities exchange.

(c) A copy of any contract executed or ratified pursuant to paragraph (a) shall be transmitted to the Commission promptly after execution or ratification unless it has been previously transmitted.

(d) Any contract executed or ratified pursuant to paragraph (a) shall be ratified by the board of directors of the registered management investment company at least annually thereafter.

[Rule N-17F-1, 5 F.R. 4317, Oct. 31, 1940]

§ 270.17f-2 Custody of investments by registered management investment company.

(a) The securities and similar investments of a registered management investment company may be maintained in the custody of such company only in accordance with the provisions of this section. Investments maintained by such a company with a bank or other company whose functions and physical facilities are supervised by Federal or State authority under any arrangement whereunder the directors, officers, employees or agents of such company are authorized or permitted to withdraw such investments upon their mere receipt, are deemed to be in the custody of such company and may be so maintained only upon compliance with the provisions of this section.

(b) Except as provided in paragraph (c) of this section, all such securities and similar investments shall be deposited in the safekeeping of, or in a vault or other depository maintained by, a bank or other company whose functions and physical facilities are supervised by Federal or State authority. Investments so deposited shall be physically segregated at all times from those of any other person and shall be withdrawn only in connection with transactions of the character described in paragraph (c) of this section.

(c) The first sentence of paragraph (b) of this section shall not apply to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such investment company in connection with

a loan or other transaction authorized by specific resolution of its board of directors, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or other transactions necessary or appropriate in the ordinary course of business relating to the management of securities.

(d) Except as otherwise provided by law, no person shall be authorized or permitted to have access to the securities and similar investments deposited in accordance with paragraph (b) of this section except pursuant to a resolution of the board of directors of such investment company. Each such resolution shall designate not more than five persons who shall be either officers or responsible employees of such company and shall provide that access to such investments shall be had only by two or more such persons jointly, at least one of whom shall be an officer; except that access to such investments shall be permitted (1) to properly authorized officers and employees of the bank or other company in whose safekeeping the investments are placed and (2) for the purpose of paragraph (f) of this section to the independent public accountant jointly with any two persons so designated or with such officer or employee of such bank or such other company. Such investments shall at all times be subject to inspection by the Commission through its authorized employees or agents accompanied, unless otherwise directed by order of the Commission, by one or more of the persons designated pursuant to this paragraph.

(e) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the safekeeping of the bank or other company, shall sign a notation in respect of such deposit, withdrawal or order which shall show (1) the date and time of the deposit, withdrawal or order, (2) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (3) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (4) if withdrawn and delivered to another person

the name of such person. Such notation shall be transmitted promptly to an officer or director of the investment company designated by its board of directors who shall not be a person designated for the purpose of paragraph (d) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year.

(f) Such securities and similar investments shall be verified by complete examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant, stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be transmitted to the Commission by the accountant promptly after each such examination.¹

[Rule N-17F-2, 12 F.R. 6717, Oct. 11, 1947]

§ 270.17g-1 Bonding of officers and employees of registered management investment companies.

(a) Each registered management investment company shall provide and maintain a bond issued by a reputable fidelity insurance company, authorized to do business in the place where the bond is issued, against larceny and embezzlement, covering each officer and employee of the investment company, who may singly, or jointly with others, have access to securities or funds of the company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities. Such bond may be in the form of an individual bond for each such person or a schedule or blanket bond covering all such persons.

(b) Each such bond shall be in such reasonable amount as a majority of the board of directors of the investment company who are not such officers and employees thereof shall determine with due consideration to the value of the

aggregate assets of such company to which any such officer or employee may have access. Notwithstanding any such determination the Commission may in any case, by order after appropriate notice and opportunity for hearing, prescribe minimum reasonable amounts, including the type, form and coverage, of a bond or bonds for each such officer and employee or each class of such officers and employees.

(c) A copy of the resolution of the board of directors of the investment company determining the amount, type, form and coverage of each such bond and a copy of the bond shall be filed with the Commission within 10 days after the execution of each bond together with a statement by an officer of the company as to the period for which the premiums for such bond have been paid. Each company shall notify the Commission immediately upon cancellation or termination of each such bond unless contemporaneously with or prior to such cancellation or termination a new bond or bonds have been provided and are effective.

(d) Where the investment company is an unincorporated company managed by a depositor or investment adviser, the terms "officer" and "employee" shall include, for the purposes of this section the depositor or investment adviser and its officers and employees.

[Rule N-17G-1, 12 F.R. 6717, Oct. 11, 1947, as amended at 16 F.R. 499, Jan. 19, 1951]

§ 270.18c-1 Exemption of privately held indebtedness.

The issuance or sale of more than one class of senior securities representing indebtedness by a small business investment company, licensed under the Small Business Investment Act of 1958, shall not be prohibited by section 18(c) so long as such small business investment company does not have outstanding any publicly held indebtedness, and all securities of any such class are (a) privately held by the Small Business Administration, or banks, insurance companies or other institutional investors, (b) not intended to be publicly distributed, and (c) not convertible into, exchangeable for, or accompanied by any option to acquire, any equity security.

[26 F.R. 11240, Nov. 29, 1961]

¹ An opinion of the Commission's Chief Accountant dealing with the nature and scope of the examination required by this section and Rule N-17F-1 (§ 270.17f-1) is set forth in IC Release No. 279 (see Accounting Release No. 27 in tabulation, Part 211 of this chapter).

§ 270.19-1 Written statement to accompany dividend payments by management companies.

(a) Every written statement made pursuant to section 19 by or on behalf of a management company shall be made on a separate paper and shall clearly indicate what portion of the payment per share is made from the following sources:

(1) Net income for the current or preceding fiscal year, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties.

(2) Accumulated undistributed net profits from the sale of securities or other properties (except that an open-end company may treat as a separate source its net profits from such sales during its current fiscal year).

(3) Paid-in surplus or other capital source.

To the extent that a payment is properly designated as being made from a source specified in subparagraph (1) or (2), it need not be designated as having been made from a source specified in this subparagraph.

(b) If the payment is made in whole or in part from a source specified in paragraph (a) (2) the written statement shall indicate, after giving effect to the part of such payment so specified, the deficit, if any, in the aggregate of (1) accumulated undistributed realized profits less losses on the sale of securities or other properties and (2) the net unrealized appreciation or depreciation of portfolio securities, all as of a date reasonably close to the end of the period as of which the dividend is paid. Any statement made pursuant to the preceding sentence shall specify the amount, if any, of such deficit which represents unrealized depreciation of portfolio securities.

(c) Accumulated undistributed net income and accumulated undistributed net profits from the sale of securities or other properties shall be determined, at the option of the company, either (1) from the date of the organization of the company, (2) from the date of a reorganization, as defined in clause (A) or (B) of section 2(a)(32) of the act (54 Stat. 790; 15 U.S.C. 80a-2), (3) from the date as of which a write-down of portfolio securities was made in connection with a corporate readjustment, approved by stockholders, of the type

known as a "quasi-reorganization," or (4) from January 1, 1925, to the close of the period as of which the dividend is paid, without giving effect to such payment.

(d) For the purpose of this section, open-end companies which upon the sale of their shares allocate to undistributed income or other similar account that portion of the consideration received which represents the approximate per share amount of undistributed net income included in the sales price, and make a corresponding deduction from undistributed net income upon the purchase or redemption of shares, need not treat the amounts so allocated as paid-in surplus or other capital source.

(e) For the purpose of this section, the source or sources from which a dividend is paid shall be determined (or reasonably estimated) to the close of the period as of which it is paid without giving effect to such payment. If any such estimate is subsequently ascertained to be inaccurate in a significant amount, a correction thereof shall be made by a written statement pursuant to section 19 or in the first report to stockholders following discovery of the inaccuracy.

(f) Insofar as a written statement made pursuant to section 19 relates to a dividend on preferred stock paid for a period of less than a year, a company may elect to indicate only that portion of the payment which is made from sources specified in subparagraph (a) (1), and need not specify the sources from which the remainder was paid. Every company which in any fiscal year elects to make a statement pursuant to the preceding sentence shall transmit to the holders of such preferred stock, at a date reasonably near the end of the last dividend period in such fiscal year, a statement meeting the requirements of paragraph (a) on an annual basis.

(g) The purpose of this section, in the light of which it shall be construed, is to afford security holders adequate disclosure of the sources from which dividend payments are made. Nothing in this section shall be construed to prohibit the inclusion in any written statement of additional information in explanation of the information required by this section. Nothing in this section shall be construed to permit a dividend payment in violation of any State law or to prevent compliance with any requirement

of State law regarding dividends consistent with this rule.

[Rule N-19-1, 6 F.R. 1114, Feb. 25, 1941]

CROSS REFERENCE: For interpretative release applicable to § 270.19-1, see No. 71 in tabulation, Part 271 of this chapter.

§ 270.20a-1 Solicitation of proxies, consents and authorizations.

(a) No person shall solicit or permit the use of his name to solicit any proxy, consent or authorization in respect of any security of which a registered investment company is the issuer, except upon compliance with §§ 270.20a-2 and 270.20a-3 and all rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered on a national securities exchange. Unless the solicitation is made in respect of a security registered on a national securities exchange, none of the soliciting material need be filed with such exchange.

(b) If the solicitation is made by or on behalf of the management of the investment company, then the investment adviser or any prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the investment company promptly transmit to the investment company all information necessary to enable the management of such company to comply with the rules and regulations applicable to such solicitation. If the solicitation is made by any person other than the management of the investment company, on behalf of and with the consent of the investment adviser or prospective investment adviser, then the investment adviser or prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the person making the solicitation promptly transmit to such person all information necessary to enable such person to comply with the rules and regulations applicable to the solicitation.

[25 F.R. 1865, Mar. 3, 1960]

§ 270.20a-2 Information pertaining to investment adviser and investment advisory contract.

(a) If action is to be taken with respect to the election of directors of the

investment company and the solicitation is made by or on behalf of the management of the investment company or by or on behalf of an investment adviser, the following information shall also be included in the proxy statement.

Instruction. Information with respect to a prospective investment adviser shall be furnished to the extent applicable.

(1) State the name and address of the investment adviser, the date of the existing investment advisory contract, the date on which it was last submitted to a vote of security holders of the investment company and the purpose of such submission. Briefly describe the terms of the contract, including the rate of compensation of the investment adviser. State the aggregate amount of the investment adviser's fee and the amount and purpose of any other material payments by the investment company to the investment adviser during the last fiscal year of the investment company. If any person is acting as an investment adviser of the investment company otherwise than pursuant to a written contract which has been approved by the security holders of such company, identify such person and describe the nature of the services and arrangements therefor.

(2) State the name, address and principal occupation of the principal executive officer and each director or general partner of the investment adviser.

(3) State the names and addresses of all parents of the investment adviser and show the basis of control of the investment adviser and each parent by its immediate parent.

Instructions. 1. If any person named is a corporation, include the percentage of its voting securities owned by its immediate parent.

2. If any person named is a partnership, the general partners having the three largest partnership interests (computed by whatever method is appropriate in the particular case) shall be named.

(4) If the investment adviser is a corporation and if, to the knowledge of the persons making the solicitation or the persons on whose behalf the solicitation is made, any person not named in answer to subparagraph (3) of this paragraph owns of record or beneficially 10 per cent or more of the outstanding voting securities of the investment adviser, indicate that fact and state the name and address of each such person.

(5) Name each officer, director or nominee for election as a director of the investment company who is an officer, employee, director or general partner of the investment adviser. As to any officer, director or nominee for election as a director of the investment company who is not a director or general partner of the investment adviser and who owns any securities of or has any other material direct or indirect interest in the investment adviser or any person controlling, controlled by or under common control with the investment adviser, state the nature of such interest.

(6) Describe any action with respect to the investment advisory contract which has been taken since the beginning of the last fiscal year by the board of directors of the investment company, unless such action was described in the proxy statement for the last annual meeting for the election of directors. Identify any director of the investment company who, at the time of the action described, owned any securities of, or had any other material direct or indirect interest in, the investment adviser or any person controlling, controlled by or under common control with the investment adviser, and state the nature of such interest.

(7) Name each person employed as a broker by or on behalf of the investment company in which the investment adviser, any officer, director or general partner, any person controlling, controlled by or under common control with the investment adviser, or any officer, director or nominee for election as a director of the investment company has any material direct or indirect interest. State the nature of such interest and amount of brokerage fees received by or participated in by each such broker from business originating with the investment company during its last fiscal year.

(8) If any officer, director or any nominee for election as a director of the investment company, any investment adviser, or any person named in response to subparagraph (2) or (3) of this paragraph purchased or sold any securities of the investment adviser or any of its parents, subsequent to the beginning of the last fiscal year of the investment company or is a party to any contract for the purchase or sale of any such securities, describe the transaction, identify the parties, state the consideration,

the terms of payment and describe any arrangement or understanding with respect to the composition of the board of directors of the investment company or of the investment adviser, or with respect to the selection or appointment of any person to any office with either such company.

Instruction. Transactions involving securities in an amount not exceeding 1 per cent of the outstanding securities of any class of the investment adviser or any of its parents may be omitted.

(9) Unless the investment adviser is a bank, include a balance sheet of the investment adviser as of the end of its last fiscal year. Such balance sheet shall be certified by an independent public or certified public accountant. The Commission for good cause shown may, however, in its discretion permit (i) the omission of certification of such balance sheet, or (ii) the summarization or omission of such balance sheet if the investment adviser is primarily engaged in a business or businesses other than the underwriting or distribution of investment company securities or the performance of advisory services for registered investment companies.

(10) If, since the beginning of the investment company's last fiscal year, any investment advisory contract was terminated for any reason, state the date of such termination, identify the investment adviser and describe the circumstances of such termination.

(11) Identify any officer, director or nominee for election as a director of the investment company having any material direct or indirect interest in the principal underwriter or prospective principal underwriter of the securities of the investment company and state the nature of such interest. Describe the nature of any material relationship between the investment adviser and such principal underwriter.

(12) State the names and addresses of all parents of the principal underwriter or prospective principal underwriter of the securities of the investment company, showing the basis of control of such underwriter and each parent by its immediate parent.

Instruction. The instructions to subparagraph (3) of this paragraph shall apply to subparagraph (12) of this paragraph.

(b) If action is to be taken with respect to an investment advisory contract,

the following information shall be included in the proxy statement:

(1) The information specified in subparagraphs (1) through (12) of paragraph (a) of this section shall be included. This information shall be furnished with respect to the existing investment adviser or any prospective investment adviser, whichever is appropriate.

(2) Describe (i) the nature of the action to be taken and the reasons therefor; (ii) the terms of the contract to be acted upon and any material differences between such contract and the arrangements then or previously existing; and (iii) if the action is to be taken because of the termination or prospective termination of a prior or existing contract, the circumstances giving rise to such termination.

(3) Describe any arrangement or understanding made in connection with the proposed investment advisory contract with respect to the composition of the board of directors of the investment company or the investment adviser or with respect to the selection or appointment of any person to any office with either such company.

(4) If the investment adviser acts as such with respect to any other investment company, identify and state the size of each such other company and state the rate of the investment adviser's compensation.

(c) The definitions in § 270.8b-2 (Rule 8b-2) shall be applicable to the terms used in this section.

[25 F.R. 1866, Mar. 3, 1960]

§ 270.20a-3 Information as to certain transactions.

(a) This section shall apply to a solicitation if (1) the information specified in Item 7 of Schedule 14A of Regulation 14 (Part 240 of this chapter) is required to be furnished for an investment company, or (2) action is to be taken with respect to an investment advisory contract.

(b) Describe briefly, and where practicable state the approximate amount of, any material interest, direct or indirect, of any officer, director or nominee for election as a director of the investment company in any material transactions since the beginning of the investment company's last fiscal year, or in any ma-

terial proposed transactions, to which the investment adviser of the investment company or any parent or subsidiary of the investment adviser was or is to be a party.

Instructions. 1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

2. As to any transaction involving the purchase or sale of assets by or to the investment adviser, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of such person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth but the amount involved in the transaction with the partnership shall be stated.

4. No information need be given in response to this section with respect to any interest of (i) the investment adviser of the investment company, (ii) any affiliated person of such investment adviser or (iii) of any person whose sole interest is as a security holder of the investment adviser, in any transaction which is not related to the business or operations of the investment company and to which neither the investment company nor any of its parents or subsidiaries is a party.

5. This section does not require the disclosure of any interest in any transaction unless such interest and transaction are material.

[25 F.R. 1866, Mar. 3, 1960]

§ 270.22d-1 Variations in sales load permitted for certain sales of redeemable securities.

A registered investment company which is the issuer of redeemable securities, a principal underwriter of such securities or a dealer therein shall be exempted from the provisions of section 22(d) to the extent necessary to permit the sale of such securities by such persons at prices which reflect reductions in, or eliminations of, the sales load under any of the following circumstances:

(a) (1) In accordance with a scale of reducing sales load varying with the quantity of securities purchased by any person. The quantity entitling any person to any such reduced sales load may be computed on any of the following bases, and may include redeemable secu-

rities of other registered investment companies having the same principal underwriter as the issuer of such securities: (i) The aggregate quantity of securities being purchased at any one time; (ii) the aggregate quantity of securities previously purchased or acquired and then owned plus the securities being purchased; or (iii) the aggregate quantity of securities purchased by any person within a period of no more than thirteen months from the date of and pursuant to a written statement of his intention, accepted by the underwriter, which provides that the purchaser intends, but is not obligated, to purchase securities within such period in a specified aggregate amount which would entitle the purchaser to a quantity discount if purchased at one time, and which further provides that each purchase made pursuant to the statement shall be made either (a) at the price applicable to the quantity of securities being purchased in each separate transaction until at least a sufficient quantity of securities has been purchased to qualify for a discount pursuant to the statement, or until the aggregate quantity specified therein has been purchased, whereupon a retroactive price adjustment for all purchases theretofore made under the statement to reflect the quantity discount to which the purchaser is then entitled pursuant to the statement shall be made by the underwriter and the dealer involved, if any, or (b) at the price applicable to the intended aggregate quantity of securities specified by the purchaser, provided that an amount of the securities purchased shall be retained by the underwriter or held by a bank escrow agent pursuant to terms and conditions which will reasonably assure that the full applicable sales load will be charged if the purchaser does not complete the intended purchases. The statement of intention may also provide that, if the total purchases made within the period covered by the statement exceed the amount specified by the purchaser as his expected aggregate purchases, and equal an aggregate amount which would, if purchased at a single time, qualify for an additional quantity discount, a retroactive price adjustment shall be made by the underwriter and the dealer involved, if any, for all purchases made under the statement to reflect the quantity discount applicable to the aggregate amount of such purchases.

(2) The scale of reducing sales load and the method of computation utilized shall be specifically described in the prospectus and shall be applicable to sales to all persons.

(3) As used in this paragraph the term "any person" shall include (i) an individual, or an individual, his spouse and their children under the age of twenty-one, purchasing securities for his or their own account, and (ii) a trustee or other fiduciary purchasing securities for a single trust estate or single fiduciary account (including a pension, profit-sharing, or other employee benefit trust created pursuant to a plan qualified under section 401 of the Internal Revenue Code) although more than one beneficiary is involved; provided, however, that the term "any person" shall not include a group of individuals whose funds are combined, directly or indirectly, for the purchase of redeemable securities of a registered investment company jointly or through a trustee, agent, custodian, or other representative, nor shall it include a trustee, agent, custodian, or other representative of such a group of individuals.

(b) In accordance with a systematic investment or dividend reinvestment plan which provides for the reinvestment of dividends from investment income in full shares or in full and fractional shares, if:

(1) Stockholders who are not participants in such a plan are given a separate opportunity to reinvest each such dividend at the same reduction in sales load granted to plan participants, subject to the right of the issuer to pay fractional interests in cash; or

(2) The privilege of such reinvestment is available only to participants in such a plan, provided: (i) The plan is described in the prospectus; (ii) no charge, in connection with the reinvestment of dividends from investment income in shares under such plan, is borne by the issuer, except that the issuer may bear a charge equivalent to the expense it would otherwise have incurred in paying dividends to stockholders participating in the plan; (iii) participation in the dividend reinvestment plan is available to all security holders, subject only to the right to limit participation to the holders of securities of a stated minimum value, at the time application is made to participate in the plan, not greater than

\$1,200; and (iv) all stockholders are notified of the availability of the dividend reinvestment plan at least once each year by inclusion of a reference thereto in the annual report or other document mailed to stockholders together with the name and address of a person from whom the prospectus may be obtained.

(c) In accordance with a systematic investment or dividend reinvestment plan which provides for the reinvestment of capital gains distributions in full shares or in full and fractional shares at net asset value, if:

(1) Stockholders who are not participants in such a plan are given a separate opportunity to reinvest each such capital gains distribution in whole shares at net asset value, subject to the right of the issuer to pay fractional interests in cash; provided, however, that a company which follows the practice of distributing realized capital gains in one annual distribution (except for such balance as it may be necessary to distribute in the first quarterly dividend of the following year in order to relieve the company of payment of any Federal tax thereon) shall not be required to make such a separate offer of reinvestment to non-plan participants when such distribution amounts to less than one-half of 1 percent of the net asset value of a share at the time of declaration; or

(2) The privilege of reinvestment at net asset value is available only to plan participants, provided: (i) The plan is described in the prospectus; (ii) participation in the dividend reinvestment plan is available to all security holders without limitation of any kind; and (iii) all stockholders are notified of the availability of the dividend reinvestment plan at least once each year by inclusion of a reference thereto in the annual report or other document mailed to stockholders; together with the name and address of a person from whom the prospectus may be obtained.

(d) For the purpose of paragraphs (b) and (c) of this section "separate opportunity" to reinvest dividends or distributions shall include a right given to security holders to elect to receive such dividend or distribution in stock or cash, or to reinvest a cash payment within a specified period of time after receipt thereof.

(e) Upon the sale pursuant to a uniform offer described in the prospectus

and made to tax-exempt organizations enumerated in sections 501 (c) (3) or (13) of the Internal Revenue Code, or employees' trusts, pension, profit-sharing or other employee benefit plans qualified under section 401 of the Internal Revenue Code.

(f) Upon the sale to a registered unit investment trust which is the issuer of periodic payment plan certificates the net proceeds of which are invested in such redeemable securities.

(g) Upon the sale through a private offering, in connection with the organization of the issuer, for the purpose of providing the initial capital required under section 14 (a) of the act.

(h) Upon the sale, pursuant to a uniform offer described in the prospectus, to the directors, officers or partners of the investment company, its investment advisor or principal underwriter, or to the bona fide, full-time employees or sales representatives of any of the foregoing who have acted as such for not less than ninety days, or to any trust, pension, profit-sharing or other benefit plan for such persons, provided, that such sales are made upon the written assurance of the purchaser that the purchase is made for investment purposes, and that the securities will not be resold except through redemption or repurchase by or on behalf of the issuer.

[23 F. R. 9603, Dec. 11, 1958; 23 F. R. 10486, Dec. 30, 1958; 24 F. R. 2357, Mar. 26, 1959]

§ 270.23c-1 Repurchase of securities by closed-end companies.

(a) A registered closed-end company may purchase for cash a security of which it is the issuer, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.

(3) If the security to be purchased is junior to any class of outstanding security of the issuer representing indebted-

edness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

(4) The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

(5) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.

(6) The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.

(7) The issuer discloses to the seller or, if the seller is acting through a broker, to the seller's broker, either prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.

(8) No brokerage commission is paid by the issuer to any affiliated person of the issuer in connection with the purchase.

(9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.

(10) If the security is a stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.

(11) The issuer files with the Commission, on or before the tenth day of the calendar month following the month in which the purchase occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities under this rule sent or given during the month by or on behalf of the issuer to ten or more persons. Form N-23C-1 is hereby prescribed as the form to be used for such report.

(b) Notwithstanding the conditions of paragraph (a), a closed-end company may purchase fractional interests in, or fractional rights to receive, any security of which it is the issuer.

(c) This rule does not apply to purchases of securities made pursuant to section 23(c) (1) or (2) of the act (54 Stat. 825; 15 U.S.C. 80a-23). A registered closed-end company may file an application with the Commission for an order under section 23(c) (3) of the act permitting the purchase of any security of which it is the issuer which does not meet the conditions of this rule and which is not to be made pursuant to section 23(c) (1) or (2) of the act.

(d) This rule relates exclusively to the requirements of section 23(c) of the act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the issuer were issued.

[Rule N-23C-1, 7 F.R. 10424, Dec. 15, 1942]

CROSS REFERENCE: For interpretative release applicable to § 270.23c-1, see No. 78 in tabulation, Part 271 of this chapter.

§ 270.23c-2 Call and redemption of securities issued by registered closed-end companies.

(a) Notwithstanding the provisions of § 270.23c-1 (Rule N-23C-1), a registered closed-end investment company may call or redeem any securities of which it is the issuer, in accordance with the terms of such securities or the charter, indenture or other instrument pursuant to which such securities were issued: *Provided*, That, if less than all the outstanding securities of a class or series are to be called or redeemed the call or redemption shall be made by lot, on a pro rata basis, or in such other manner as will not discriminate unfairly against any holder of the securities of such class or series.

(b) A registered closed-end investment company which proposes to call or redeem any securities of which it is the issuer shall file with the Commission notice of its intention to call or redeem such securities at least 30 days prior to the date set for the call or redemption; *Provided, however*, That if notice of the call or the redemption is required to be published in a newspaper or otherwise, notice shall be given to the Commission at least 10 days in advance of the date of publication. Such notice shall be filed in triplicate and shall include (1) the title of the class of securities to be called or redeemed, (2) the date on which the

securities are to be called or redeemed, (3) the applicable provisions of the governing instrument pursuant to which the securities are to be called or redeemed and, (4) if less than all the outstanding securities of a class or series are to be called or redeemed, the principal amount or number of shares and the basis upon which the securities to be called or redeemed are to be selected.

[Rule N-23C-2, 7 F.R. 6669, Aug. 25, 1942]

§ 270.24b-1 Definitions.

(a) The term "form letter" as used in section 24(b) of the act includes (1) one of a series of identical sales letters, and (2) any sales letter a substantial portion of which consists of a statement which is in essence identical with similar statements in sales letters sent to 25 or more persons within any period of 90 consecutive days.

(b) The term "distribution" as used in section 24(b) of the act includes the distribution or redistribution to prospective investors of the content of any written sales literature, whether such distribution or redistribution is effected by means of written or oral representations or statements.

(c) The term "rules and regulations" as used in section 24 (a) and (c) of the act shall include the forms for registration of securities under the Securities Act of 1933 and the related instructions thereto.

(Sec. 19, 48 Stat. 85, as amended, sec. 319, 53 Stat. 1173; 15 U.S.C. 77s, 77sss) [Rule N-24B-1, 6 F.R. 3020, June 21, 1941, as amended by 21 F.R. 1046, Feb. 15, 1956]

§ 270.24b-2 Filing copies of sales literature.

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the act either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material.

[Rule N-24B-2, 6 F.R. 3020, June 21, 1941]

§ 270.24e-1 Filing of certain prospectuses as post-effective amendments to registration statements under the Securities Act of 1933.

Section 24(e) (3) of the act requires that when a prospectus is revised so that it may be available for use in compliance with section 10(a) (3) of the Securities

Act of 1933 for a period extending beyond the time when the previous prospectus would have ceased to be available for such use, such revised prospectus, in order to meet the requirements of section 10 of said act, must be filed as an amendment to the registration statement under said act and such amendment must have become effective prior to the use of the revised prospectus. Except as hereinabove provided, section 24(e) (3) of the act shall not be deemed to govern the times and conditions under which post-effective amendments shall be filed to registration statements under the Securities Act of 1933.

(Sec. 24, 54 Stat. 825, as amended; 15 U.S.C. 80a-24) [20 F.R. 2856, Apr. 28, 1955]

§ 270.28b-1 Investment in loans partially or wholly guaranteed under the Servicemen's Readjustment Act of 1944, as amended.

(a) The term "qualified investments" as used in section 28(b) of the Investment Company Act of 1940 shall include:

(1) Any loan, any portion of which is guaranteed under Title III of the Servicemen's Readjustment Act of 1944, as amended, and which is secured by a first lien on real estate: *Provided*, The amount of the loan not so guaranteed does not exceed 66⅔ percent of the reasonable value of such real estate as determined by proper appraisal made by an appraiser designated by the Administrator of Veterans' Affairs;

(2) Any secondary loan the full amount of which is guaranteed under section 505(a) of Title III of the above mentioned act and which is secured by a second lien on real estate:

Provided, however, That any such loan shall be deemed a qualified investment only so long as (i) insurance policies are required to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality, and (ii) the loan shall remain guaranteed under Title III of the Servicemen's Readjustment Act of 1944, as amended, to the extent specified in subparagraph (1) or (2) of this paragraph, as the case may be.

(b) Loans made pursuant to this section shall be valued at the original principal amount of the loan less all payments made thereon which have been

applied to the reduction of such principal amount.

(Secs. 28(b), 38, 54 Stat. 832, 841; 15 U.S.C. 80a-28(b), 80a-38) [Rule N-28B-1, 11 F.R. 6483, June 13, 1946]

§ 270.30a-1 Annual reports.

(a) Every registered investment company shall file an annual report, on the appropriate form prescribed therefor, not more than 120 days after the close of each fiscal year ending on or after the date upon which such company files its registration statement pursuant to section 8(b): In case the registrant finds it impracticable to file the report within such 120 days, it may file with the Commission an application for an extension of time to a specified date within 6 months after the close of the fiscal year. Such application shall state the grounds of impracticability and shall contain an agreement to file the report on or before such specified date. The application shall be deemed granted unless the Commission within 10 days after receipt thereof shall enter an order denying the application as being unreasonable and unnecessary under the circumstances.

(b) Every registered investment company shall be exempt from the provisions of section 30(a) insofar as such section requires the filing of an annual report for any fiscal year ending prior to the date upon which such company files its registration statement pursuant to section 8(b).

[Rule N-30A-1, 6 F.R. 74, Jan. 4, 1941]

§ 270.30a-2 Forms for annual reports of registered investment companies.

The following forms are hereby prescribed as the forms for annual reports which shall be filed by registered investment companies pursuant to section 30 (a) of the act:

Form N-30A-1 for registered management investment companies. This form shall be used by all registered management investment companies except those which issue periodic payment plan certificates.

Form N-30A-2 for unit investment trusts which are currently issuing securities. This form shall be used by all unit investment trusts which are currently issuing securities, including unit investment trusts which are issuers of periodic payment plan certificates.

*Form N-30A-3 for unincorporated management investment companies currently issuing periodic payment plan certificates.*² This form shall be used by all unincorporated management companies currently issuing periodic payment plan certificates.

[Rule N-30A-2, 8 F.R. 6079, May 12, 1943]

§ 270.30a-3 Annual report for totally held registered investment company subsidiary of registered investment company.

(a) Notwithstanding the provisions of § 270.30a-2 (Rule N-30A-2), a registered management investment company for which Form N-30A-1 (§ 274.101 of this chapter) is appropriate for annual reports and which is a totally held subsidiary of a registered management investment company may file a statement in the form prescribed by paragraph (b) of this section in lieu of an annual report on Form N-30A-1 (§ 274.101 of this chapter), if the following conditions are met:

(1) The fiscal year of the subsidiary ends as of the same date as the fiscal year of the parent;

(2) The information and exhibits required by Form N-30A-1 (§ 274.101 of this chapter) with respect to the subsidiary are included in the annual report of the parent;

(3) Financial statements for the subsidiary for the period required by Form N-30A-1 (§ 274.101 of this chapter) are included in the annual report of the parent, either on a consolidated or separate basis; and

(4) It is indicated on the facing page of the parent's annual report that such report is filed on behalf of itself and the subsidiary, naming the subsidiary.

(b) A totally held registered investment company subsidiary which avails itself of the privilege accorded by this section shall file with the Commission in quadruplicate, within the time prescribed by § 270.30a-2 (Rule N-30A-2) for filing annual reports, a statement in the following form:

Pursuant to § 207.30a-3 [Rule N-30A-3], _____, a totally held subsidiary of _____, a registered management investment company, hereby incorporates by reference as its

² Filed as part of original document.

annual report, pursuant to section 30(a) of the Investment Company Act of 1940 (Sec. 30 (a), 54 Stat. 836; 15 U.S.C. 80a-30), all information and documents contained in the Annual Report on Form N-30A-1 (including any amendment thereto) filed by the latter company for the fiscal year ended-----.

(c) The statement required by paragraph (b), above, shall be filed under cover of the facing sheet of Form N-30A-1. At least one copy of the statement shall be signed in the manner prescribed by Form N-30A-1.

[Rule N-30A-3, 7 F.R. 598, Jan. 30, 1942, as amended at 19 F.R. 2779, May 14, 1954]

§ 270.30b1-1 Form for quarterly report of registered investment companies.

The following form is hereby prescribed as the form for quarterly report which shall be filed by registered investment companies, pursuant to section 30(b) (1) of the act (54 Stat. 836; 15 U.S.C. 80a-30).

Form N-30B-1 for registered management investment companies. This form shall be used by all registered management investment companies except those which issue periodic payment plan certificates.

[Rule N-30B1-1, 7 F.R. 3423, May 8, 1942, as amended at 7 F.R. 4528, June 18, 1942]

§ 270.30b1-2 Quarterly report for totally held registered investment company subsidiary of registered investment company.

(a) Notwithstanding the provisions of § 270.30b1-1 (Rule N-30B1-1), a registered management investment company for which Form N-30B-1 (§ 274.106 of this chapter) is appropriate for quarterly reports and which is a totally held subsidiary of a registered management investment company may file a statement in the form prescribed by paragraph (b) of this section in lieu of a quarterly report on Form N-30B-1 (§ 274.106 of this chapter), if the following conditions are met:

(1) The fiscal quarter of the subsidiary ends as of the same date as the fiscal quarter of the parent;

(2) The information and exhibits required by Form N-30B-1 (§ 274.106 of this chapter) with respect to the subsidiary are included in the quarterly report of the parent; and

(3) It is indicated on the facing page of the parent's quarterly report that such report is filed on behalf of itself and the subsidiary, naming the subsidiary.

(b) A totally held registered investment company subsidiary which avails itself of the privilege accorded by this rule shall file with the Commission in quadruplicate, within the time prescribed by the instructions for Form N-30B-1 for filing quarterly reports a statement in the following form:

Pursuant to § 270.30b1-2 (Rule N-30B1-2) -----, a totally held subsidiary of -----, a registered management investment company, hereby incorporates by reference as its quarterly report, pursuant to section 30(b)(1) of the Investment Company Act of 1940 (54 Stat. 836, 15 U.S.C. 80a-30), all information and documents contained in the quarterly report on Form N-30B-1 (including any amendment thereto) filed by the latter company for the fiscal quarter ended-----.

(c) The statement required by paragraph (b), above, shall be filed under cover of the facing sheet of Form N-30B-1. At least one copy of the statement shall be signed in the manner prescribed by Form N-30B-1.

(Secs. 8, 30, 54 Stat. 803, 836; 15 U.S.C. 80a-8, 80a-29) [Rule N-30B1-2, 7 F.R. 3423, May 8, 1942, as amended at 19 F.R. 2779, May 14, 1954]

§ 270.30b2-1 Filing of copies of reports to stockholders.

Four copies of every periodic or interim report or similar communication containing financial statements and transmitted by or on behalf of any registered investment company to any class of such company's security holders shall be filed with the Commission not later than 10 days after such transmission.

[Rule N-30B2-1, 6 F.R. 74, Jan. 4, 1941]

§ 270.30d-1 Reports to stockholders of management companies.

(a) At least semiannually every registered management company shall transmit by mail, postage prepaid, to each stockholder of record, a report containing all of the information and financial statements, or their equivalent, specified in clauses (1) to (6) inclusive of section 30(d) of the Act. The first such report shall be made as of a date not later than the close of the fiscal year or half-year first occurring on or after the date on which the company's notification of registration under the Act is filed with the Commission. Each report shall be mailed within 45 days after the date as of which the report is made, except that if the reporting company is

a nondiversified company having one or more majority-owned subsidiaries which are not investment companies, the report may be mailed within 60 days after the date as of which it is made. The Commission may, however upon written request showing good cause therefor, extend the period of time within which a report may be mailed. Section 270.0-5 shall not apply to such requests.

(b) Reports made as of the close of the reporting company's fiscal year shall cover the whole fiscal year (or the life of the company if less than a whole fiscal year) and shall be accompanied by a certificate of an independent public accountant or accountants. Reports made as of any date other than the close of the fiscal year shall cover a period commencing either (1) with the beginning of the fiscal year (or the date of organization, if a newly organized company) or (2) with a date not later than the day after the close of the period covered by the last report conforming with the requirements of section 30(d) of the Act and the rules and regulations thereunder.

(c) The list showing the amounts and values of securities owned on the date of the balance sheet or its equivalent, required by clause (2) of section 30(d) of the act, shall indicate each issue separately; except that:

(1) Securities which, because believed worthless, have been charged off on the books or written down to a merely nominal carrying amount may be omitted, provided that all securities charged off or written down since the effective date of the act shall be separately listed in the next succeeding report conforming with the requirements of section 30(d) and the rules and regulations thereunder, and also, if such next succeeding report is not an annual report in the next succeeding annual report; and

(2) An amount not exceeding 5 percent of the aggregate value of securities shown on the list may be listed in one amount as "miscellaneous securities," if the securities so listed have been held for not more than one year prior to the date of the balance sheet or its equivalent and have not previously been reported by name in any report or statement transmitted to stockholders or filed with the Commission or with any national securities exchange.

(d) In making reports required under section 30(d) of the act, an open-end

company may include therein, as the equivalent of the balance sheet required by clause (1) of said section and the statement of surplus required by clause (4) thereof, the following:

(1) A statement of its assets (showing its investments at "value" as defined in section 2(a)(39)(B) of the act) and its liabilities, and of its net assets, and the number and par value or stated value of the shares representing such net assets, all as of the end of the period for which the report is made.

(2) A statement of changes in net assets for the period for which the report is made, showing the net assets (on the same basis of value) as of the beginning of the period, and the various credits and debits resulting in the net assets figure shown pursuant to subparagraph (1) of this paragraph. Each charge which represents more than 5 percent of the total charges during the period and each credit which represents more than 5 percent of the total credits during the period must appear as a separate item.

(3) A statement with respect to the period for which the report is made, and with respect to the three complete fiscal years next preceding the commencement of such period, of the net asset value per share (on the same basis of value) of the reporting company's securities at the beginning and at the end of each such period, and a statement of the dividends declared per share during each such period together with the amount per share of such dividends declared out of sources other than net income for each such period, excluding from such net income profits or losses realized on the sale of securities or other properties.

[Rule N-30D-1, 6 F.R. 74, Jan. 4, 1941, as amended at 27 F.R. 11639, Nov. 27, 1962]

§ 270.30d-2 Reports to shareholders of unit investment trusts.

At least semiannually every registered unit investment trust substantially all the assets of which consist of securities issued by a management company shall transmit by mail, postage prepaid, to each shareholder of record (including record holders of periodic payment plan certificates), a report containing all the applicable information and financial statements, or their equivalent, required by Rule N-30D-1 to be included in reports of such management company for the same fiscal period. Each such report

shall be mailed within the period allowed such management company by Rule N-30D-1 for mailing reports to its stockholders.

[Rule N-30D-2, 6 F.R. 74, Jan. 4, 1941]

§ 270.30f-1 Filing of statements pursuant to section 30(f).

(a) Initial statements of beneficial ownership of outstanding securities required by section 30(f) of the act shall be filed on Form 3 (§ 274.202 of this chapter). Statements of changes in such beneficial ownership required by that section shall be filed on Form 4 (§ 274.203 of this chapter). All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) The rules under section 16(a) of the Securities Exchange Act of 1934 shall apply to statements filed pursuant to paragraph (a) of this section to the extent that such rules are pertinent.

(c) No statements need be filed pursuant to section 30(f) of the act by an affiliated person of an investment adviser in his capacity as such if such person is solely an employee, other than an officer, of such investment adviser.

(Sec 30(f), 54 Stat. 836, 15 U.S.C. 80a-29)
[26 F.R. 2466, Mar. 23, 1961]

§ 270.31a-1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) Every registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for financial statements required to be filed pursuant to Section 30 of the Investment Company Act of 1940 and of the auditor's certificates relating thereto.

(b) Every registered investment company shall maintain and keep current the following books, accounts, and other documents:

(1) Journals (or other records of original entry) containing an itemized daily record in detail of all purchases and sales of securities (including sales and redemptions of its own securities), all

receipts and deliveries of securities (including certificate numbers if such detail is not recorded by custodian or transfer agent), all receipts and disbursements of cash and all other debits and credits. Such records shall show for each such transaction the name and quantity of securities, the unit and aggregate purchase or sale price, commission paid, the market on which effected, the trade date, the settlement date, and the name of the person through or from whom purchased or received or to whom sold or delivered.

(2) General and auxiliary ledgers (or other records) reflecting all assets, liability, reserve, capital, income and expense accounts, including:

(i) Separate ledger accounts (or other records) reflecting the following:

(a) Securities in transfer; (b) Securities in physical possession; (c) Securities borrowed and securities loaned; (d) Monies borrowed and monies loaned (together with a record of the collateral therefor and substitutions in such collateral); (e) Dividends and interest received; (f) Dividends receivable and interest accrued.

INSTRUCTION: (a) and (b) of this subdivision shall be stated in terms of securities quantities only; (c) and (d) of this subdivision shall be stated in dollar amounts and securities quantities as appropriate; (e) and (f) of this subdivision shall be stated in dollar amounts only.

(ii) Separate ledger accounts (or other records) for each portfolio security, showing (as of trade dates) (a) the quantity and unit and aggregate price for each purchase, sale, receipt, and delivery of securities and commodities for such accounts, and (b) all other debits and credits for such accounts. Securities positions and money balances in such ledger accounts (or other records) shall be brought forward periodically but not less frequently than at the end of fiscal quarters. Any portfolio security, the salability of which is conditioned, shall be so noted. A memorandum record shall be available setting forth, with respect to each portfolio security account, the amount and declaration, ex-dividend, and payment dates of each dividend declared thereon.

(iii) Separate ledger accounts (or other records) for each broker-dealer, bank or other person with or through which transactions in portfolio securities are effected, showing each purchase

or sale of securities with or through such persons, including details as to the date of the purchase or sale, the quantity and unit and aggregate price of such securities, and the commissions or other compensation paid to such persons. Purchases or sales effected during the same day at the same price may be aggregated.

(iv) Separate ledger accounts (or other records), which may be maintained by a transfer agent or registrar, showing for each shareholder of record of the investment company the number of shares of capital stock of the company held. In respect of share accumulation accounts (arising from periodic investment plans, dividend reinvestment plans, deposit of issued shares by the owner thereof, etc.), details shall be available as to the dates and number of shares of each accumulation, and except with respect to already issued shares deposited by the owner thereof, prices of each such accumulation.

(3) A securities record or ledger reflecting separately for each portfolio security as of trade date all "long" and "short" positions carried by the investment company for its own account and showing the location of all securities long and the off-setting position to all securities short. The record called for by this paragraph shall not be required in circumstances under which all portfolio securities are maintained by a bank or banks or a member or members of a national securities exchange as custodian under a custody agreement or as agent for such custodian.

(4) Corporate charters, certificates of incorporation or trust agreements, and by-laws, and minute books of stockholders' and directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings.

(5) A record of each brokerage order given by or in behalf of the investment company for, or in connection with, the purchase or sale of securities, whether executed or unexecuted. Such record shall include the name of the broker, the terms and conditions of the order and of any modification or cancellation thereof, the time of entry or cancellation, the price at which executed, and the time of receipt of report of execution. The record shall indicate the name of the person who placed the order in behalf of the investment company.

(6) A record of all other portfolio purchases or sales showing details comparable to those prescribed in paragraph 5 above.

(7) A record of all puts, calls, spreads, straddles, and other options in which the investment company has any direct or indirect interest or which the investment company has granted or guaranteed; and a record of any contractual commitments to purchase, sell, receive or deliver securities or other property (but not including open orders placed with broker-dealers for the purchase or sale of securities, which may be cancelled by the company on notices without penalty or cost of any kind); containing, at least, an identification of the security, the number of units involved, the option price, the date of maturity, the date of issuance, and the person to whom issued.

(8) A record of the proof of money balances in all ledger accounts (except shareholder accounts), in the form of trial balances. Such trial balances shall be prepared currently at least once a month.

(9) A record for each fiscal quarter, which shall be completed within ten days after the end of such quarter, showing specifically the basis or bases upon which the allocation of orders for the purchase and sale of portfolio securities to named brokers or dealers and the division of brokerage commissions or other compensation on such purchase and sale orders among named persons were made during such quarter. The record shall indicate the consideration given to (i) sales of shares of the investment company by brokers or dealers, (ii) the supplying of services or benefits by brokers or dealers to the investment company, its investment adviser or principal underwriter or any persons affiliated therewith, and (iii) any other considerations other than the technical qualifications of the brokers and dealers as such. The record shall show the nature of the services or benefits made available, and shall describe in detail the application of any general or specific formula or other determinant used in arriving at such allocation of purchase and sale orders and such division of brokerage commissions or other compensation. The record shall also include the identities of the persons responsible for the determination of such allocation and such division of brokerage commissions or other compensation.

(10) A record in the form of an appropriate memorandum identifying the person or persons, committees, or groups authorizing the purchase or sale of portfolio securities. Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of subparagraph (4) of this paragraph.

(11) Files of all advisory material received from the investment adviser, any advisory board or advisory committee, or any other persons from whom the investment company accepts investment advice, other than material which is furnished solely through uniform publications distributed generally.

(12) The term "other records" as used in the expressions "journals (or other records of original entry)" and "ledger accounts (or other records)" shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems.

(c) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(d) Every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end investment company, shall maintain such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(e) Every investment adviser which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under Section 204 of the Investment Advisers Act of 1940.

(f) Every investment adviser not a majority-owned subsidiary of a registered investment company shall maintain such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a-30) [27 F.R. 11993, Dec. 5, 1962]

§ 270.31a-2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) Every registered investment company shall:

(1) Preserve permanently, the first two years in an easily accessible place, all books and records required to be made pursuant to subparagraphs (1) through (4) of § 270.31a-1(b);

(2) Preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to subparagraphs (5) through (12) of § 270.31a-1(b) and all vouchers, memoranda, correspondence, checkbooks, bank statements, cancelled checks, cash reconciliations, cancelled stock certificates, and all schedules evidencing and supporting each computation of net asset value of the investment company shares, and other documents required to be maintained by § 270.31a-1(a) and not enumerated in § 270.31a-1(b).

(b) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other docu-

ments as are required to be preserved by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(c) Every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(d) Every investment adviser which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(e) Every investment adviser not a majority-owned subsidiary of a registered investment company shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section:

(1) After a record, book or other document has been preserved for three years, a photograph or film thereof may be substituted therefor for the balance of the required time; and

(2) Any record, book or other document may be destroyed in accordance with a plan previously submitted to and approved by the Commission. A plan shall be deemed to have been approved by the Commission if notice to the contrary has not been received within 90 days after submission of the plan to the Commission.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a-30) [27 F.R. 11994, Dec. 5, 1962]

§ 270.31a-3 Records prepared or maintained by others than person required to maintain and preserve them.

(a) If the records required to be maintained and preserved pursuant to the provisions of §§ 270.31a-1 and 270.31a-2 are prepared or maintained by others on behalf of the person required to maintain and preserve such records, the person required to maintain and preserve such records shall obtain from such other person an agreement in writing to the effect that such records are the property of the person required to maintain and preserve such records and will be surrendered promptly on request.

(b) In cases where a bank or member of a national securities exchange acts as custodian, transfer agent, or dividend disbursing agent, compliance with this section shall be considered to have been met if such bank or exchange member agrees in writing to make any records relating to such service available upon request and to preserve for the periods prescribed in § 270.31a-2 any such records as are required to be maintained by § 270.31a-1.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a-30) [27 F.R. 11994, Dec. 5, 1962]

§ 270.32a-1 Exemption of certain companies from affiliation provisions of section 32(a).

A registered investment company shall be exempt from the provisions of paragraph (1) of section 32(a) of the act (54 Stat. 838; 15 U.S.C. 80a-31), insofar as said paragraph requires that independent public accounts for such company be selected by a majority of certain members of the board of directors, if:

(a) Such company meets the conditions of paragraphs (1) to (8), inclusive, of section 10(d) of the act (54 Stat. 807; 15 U.S.C. 80a-10); and

(b) Such accountants are selected by a majority of all the members of the board of directors.

[Rule N-32A-1, 6 F.R. 6631, Dec. 23, 1941]

§ 270.45a-1 Confidential treatment of names and addresses of dealers of registered investment company securities.

(a) Exhibits calling for the names and addresses of dealers to or through whom principal underwriters of registered investment companies are currently of-

fering securities and which are required to be furnished with registration statements filed pursuant to section 8(b) of the act (54 Stat. 804; 15 U.S.C. 80a-8), or periodic reports filed pursuant to section 30(a) or section 30(b) (1) of the act (54 Stat. 836; 15 U.S.C. 80a-30), shall be the subject of confidential treatment and shall not be made available to the public, except that the Commission may by order make such exhibits available to the public if, after appropriate notice and opportunity for hearing, it finds that public disclosure of such material is necessary

or appropriate in the public interest or for the protection of investors.

(b) The exhibits referred to in paragraph (a) of this section shall be filed in quadruplicate with the Commission at the time the registration statement or periodic report is filed. Such exhibits shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to the Chairman, Securities and Exchange Commission, Washington, D. C.

[Rule N-45A-1, 7 F.R. 197, Jan. 10, 1942, as amended at 20 F.R. 7036, Sept. 20, 1955]

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of the Commission respecting distinctions between the reporting requirements of section 16(a) of the Securities Exchange Act of 1934 and section 30(f) of the Investment Company Act of 1940.	12	Nov. 16, 1940	11 F.R. 10991.
Letter of General Counsel relating to section 7(b) and 26(c)	69	Feb. 19, 1941	Do.
Letter of the Director of the Investment Company Division relating to section 19 and Rule N-19-1 (17 CFR, 270.19-1).	71	Feb. 21, 1941	Do.
Statement by the Commission relating to section 23(c)(3) and Rule N-23C-1 (17 CFR, 270.23c-1).	78	Mar. 4, 1941	Do.
Letter of General Counsel relating to section 22(d)	87	Mar. 14, 1941	11 F.R. 10992.
Letter of General Counsel relating to section 22(d)	89	Mar. 13, 1941	Do.
Letter of General Counsel relating to section 24(b)	150	June 20, 1941	Do.
Opinion of General Counsel relating to sections 8(b)(1) and 13(a)	167	July 23, 1941	11 F.R. 10993.
Letter of General Counsel relating to section 10(a)	214	Sept. 15, 1941	11 F.R. 10994.
Extract from letter of the Director of the Corporation Finance Division relating to sections 20 and 34(b).	446	Feb. 5, 1943	Do.
Excerpts from letters of the Director of the Corporation Finance Division relating to section 14 and Schedule 14A under Regulation X-14.	448	Feb. 17, 1943	Do.
Letter of the Director of the Corporation Finance Division relating to section 20 of the Investment Company Act of 1940 and to Rule X-14A-7 under the Securities Exchange Act of 1934 (17 CFR, 240.14a-7).	735	Jan. 3, 1945	11 F.R. 10995.
Advertising and supplemental sales literature used in sale of investment company shares.	1503	Aug. 11, 1950	15 F.R. 5469.
Statement of Policy of the Commission relating to advertising and supplemental sales literature used in the sale of investment company shares.	2086	Jan. 31, 1955	20 F.R. 793.
Statement of the Commission as to the applicability of the Federal securities laws to real estate investment trusts.	2621	Nov. 5, 1957	22 F.R. 8977.
Statement of the Commission on the offering of common stock to the public at a per share price substantially in excess of the net asset value of the stock.	3140	Nov. 18, 1960	25 F.R. 12178.
Opinion of the Commission that "Equity Funding," "Secured Funding," or "Life Funding" constitutes an investment contract and when publicly offered is required to be registered under the Securities Act of 1933.	3187	Feb. 6, 1961	26 F.R. 1275.
Statement of the Commission advising all registered investment companies to divest themselves of interest and securities acquired in contravention of the provisions of section 12(d)(3) of the Investment Company Act of 1940 within a reasonable period of time.	3480	May 22, 1962	27 F.R. 5190.
Statement of the Commission advising any closed-end investment company contemplating repurchase of its own shares to consult with the Division of Corporate Finance as to the nature of disclosure to be made to security holders.	3542	Sept. 21, 1962	27 F.R. 9652.
Opinion and statement of the Commission in response to inquiries relating to its accounting and disclosure requirements in the matter of accounting for investment credit.	3548	Oct. 3, 1962	27 F.R. 9987.
	3611	Jan. 10, 1963	28 F.R. 586.